

**OFFICIAL CODE
OF
GEORGIA**

ANNOTATED



VOLUME 30

Title 43. Professions and Businesses

2011 Edition



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OFFICIAL CODE OF GEORGIA ANNOTATED

With Provision for Subsequent Pocket Parts

Prepared by

The Code Revision Commission
The Office of Legislative Counsel
and

The Editorial Staff of LexisNexis®



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Volume 30 **2011 Edition**

Title 43. Professions and Businesses

Including Acts of the 2011 Session of the General Assembly of Georgia
and Annotations taken from the Georgia Reports
and the Georgia Appeals Reports

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Charlottesville, Virginia

2011

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OFFICE OF SECRETARY OF STATE

I, Brian P. Kemp, Secretary of State of the State of Georgia, do hereby certify that

the statutory portion of the Official Code of Georgia Annotated contained in this volume is a true and correct copy of such material as enacted by the General Assembly of Georgia; all as same appear of file and record in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 15th day of July, in the year of our Lord Two Thousand and Eleven and of the Independence of the United States of America the Two Hundred and Thirty-Sixth.



B. P. Kemp

Brian P. Kemp, Secretary of State



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Preface

This volume cumulates and replaces the 2008 edition of Volume 30 of the Official Code of Georgia Annotated, as supplemented by the 2010 Cumulative Supplement. The 2008 Volume 30 and its 2010 Supplement may be recycled or, if so desired retained for historical purposes.

This volume contains all laws specifically codified in Title 43 by the General Assembly through the 2011 Session. This volume also contains case annotations reflecting decisions posted to LexisNexis® through April 22, 2011. These annotations will appear in the following traditional reporter sources: Georgia Supreme Court Opinions; Georgia Appeals Court Opinions; Southeastern Reporter, Second Series; Supreme Court Reporter; Federal Reporter, Third Series; Federal Supplement, Second Series; Federal Rules Decisions; and Bankruptcy Reporter. As official and traditional citations become available, substitutions for the LexisNexis® citations will be made.

Additionally, LexisNexis® has prepared annotations and references to Attorney General Opinions, law reviews, and other research sources that we hope will be beneficial as you utilize this product. A complete listing of those sources is as follows: Official and Unofficial Attorney General Opinions; Opinions of the Judicial Qualifications Commission; Advisory Opinions of the State Disciplinary Board of the State Bar; Formal Advisory Opinions of the State Disciplinary Board of the State Bar, issued by the Supreme Court of Georgia; Emory Law Journal; Georgia Law Review; Georgia State University Law Review; Mercer Law Review; Georgia State Bar Journal; American Law Reports; American Jurisprudence 2d; American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts; American Jurisprudence Trials; Corpus Juris Secundum; and Uniform Laws Annotated. Also included, where appropriate, are cross references to the Official Code of Georgia Annotated.

This volume retains amendment notes and effective date notes for Acts passed during the 2009, 2010, and 2011 Sessions of the General Assembly. In order to determine the changes which were made or the effective date applied to a Code section by an Act passed prior to the 2009 Session of the General Assembly, the user should consult the Georgia Laws.

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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the Official Code of Georgia Annotated, a User's Guide containing comments and information on the many features found within the Code has been included in Volume 1 of the Official Code of Georgia Annotated.

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Editor's notes. — Judicial decisions, attorney general opinions, and cross reference notes in this bound volume which cite to Code sections in Title 24 refer to provisions of such title as it existed prior to the January 1, 2013, effective date of Ga. L. 2011, p. 99. See the Table of Comparable Provisions at the beginning of the version of Title 24 which becomes effective on January 1, 2013.

JUDICIAL DECISIONS

Cited in *Faser v. Sears, Roebuck & Co.*, 674 F.2d 856 (11th Cir. 1982).

CHAPTER 1

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RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public

Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Validity of license law which requires security for payment of debts by licensee, 3 ALR 1271; 84 ALR 640; 101 ALR 827.

Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 42 ALR 1226; 118 ALR 646.

Public license as revocable for fraud or other misconduct before, or at the time of, its issuance, 165 ALR 1138.

Validity and construction of state statutory provision forbidding court to stay, pending review, judgment or order revoking or suspending professional, trade, or occupational license, 42 ALR4th 516.

43-1-1. Definitions.

As used in this title, the term:

(1) "Division" means the professional licensing boards division created under Code Section 43-1-2.

(2) "Division director" means the individual appointed by the Secretary of State as director of the professional licensing boards division within the office of the Secretary of State.

(3) "Professional licensing board" means any board, bureau, commission, or other agency of the executive branch of state government which is created for the purpose of licensing or otherwise regulating or controlling any profession, business, or trade and which is placed by law under the jurisdiction of the director of the professional

licensing boards division within the office of the Secretary of State. (Code 1981, § 43-1-1; Ga. L. 2000, p. 1706, § 1.)

Cross references. — State Water Well Standards Advisory Council, § 12-5-120 et seq. State Board of Registration for Foresters, § 12-6-40 et seq. State Board of Pharmacy, § 26-4-30 et seq.

Editor's notes. — This Code section was created as part of the Code revision and was thus enacted by Ga. L. 1981, Ex. Sess., p. 8 (Code Enactment Act).

JUDICIAL DECISIONS

Cited in *Seely v. Loyd H. Johnson Constr. Co.*, 220 Ga. App. 719, 470 S.E.2d 283 (1996).

43-1-2. Appointment and general powers of division director; members and meetings of professional licensing boards; examination standards; roster of licensees; funding.

(a)(1) There is created within the office of the Secretary of State the professional licensing boards division as successor to the office of the joint-secretary of the state examining boards. The Secretary of State is authorized and directed to appoint a director of the professional licensing boards division.

(2) Any action of the joint-secretary taken with regard to any state examining board prior to July 1, 2000, shall thereafter be deemed to be action taken by the director of the professional licensing boards division and that division director shall thereafter act in the stead of such joint-secretary and succeed to the powers and duties of the joint-secretary with regard to those state examining boards. The rights, privileges, entitlements, or duties of parties to contracts, leases, agreements, or other transactions entered into by the joint-secretary prior to July 1, 2000, shall continue to exist and shall not be impaired or diminished by reason of the succession of the division director to the powers and duties of the joint-secretary.

(b) The salary of the division director shall be fixed by the Secretary of State, and he or she shall hold office at the pleasure of the Secretary of State.

(c) The Secretary of State, notwithstanding any other provisions of law to the contrary, shall employ personnel as deemed necessary to carry out this chapter and to provide for all services required by each of the professional licensing boards and shall establish within the guidelines provided by the laws and rules and regulations of the State Personnel Administration the qualifications of such personnel.

(d) The division director, with the approval of the Secretary of State, notwithstanding any other provisions of law to the contrary, shall enter

into such contracts as are deemed necessary to carry out this chapter to provide for all services required by each of the professional licensing boards.

(e) The Secretary of State, notwithstanding any other provisions of law to the contrary, shall have the power to employ and shall set the qualifications and salary for a deputy division director and shall appoint executive directors as required who shall act in the absence of the division director and who shall perform such other functions of the division director under this chapter as the division director may designate. The deputy division director and executive directors as appointed shall be in the unclassified service and shall be excluded from the classified service as defined in Article 1 of Chapter 20 of Title 45.

(f) Notwithstanding any other provisions of law to the contrary, each member of the various professional licensing boards may receive the expense allowance as provided by subsection (b) of Code Section 45-7-21 and the same mileage allowance for the use of a personal car as that received by all other state officials and employees or a travel allowance of actual transportation cost if traveling by public carrier within the state. Any board member shall also be reimbursed for any conference or meeting registration fee incurred in the performance of his or her duties as a board member. For each day's service outside of the state as a board member, such member shall receive actual expenses as an expense allowance as well as the same mileage allowance for the use of a personal car as that received by other state officials and employees or a travel allowance of actual transportation cost if traveling by public carrier or by rental motor vehicle. Expense vouchers submitted by members of the various professional licensing boards are subject to approval of the president or chairperson of the respective board and the division director.

(g) All meetings and hearings of the respective professional licensing boards shall be held in the capitol, at the site of the office of the respective board, or at such other site as may be requested by the chairperson or president of a professional licensing board and approved by the division director.

(h) A majority of the appointed members of a professional licensing board shall constitute a quorum for the transaction of business by that board.

(h.1) Members of a professional licensing board shall serve until the expiration of the term for which they were appointed and until their successors have been appointed and qualified unless otherwise specified under the provisions of this title.

(i) A schedule of all meetings and hearings of the various professional licensing boards shall be maintained at the office of the division director and be available for public review.

(j) The division director may establish administrative standards for the examination of applicants for licensure by the various professional licensing boards, notwithstanding any other provisions of law to the contrary. These administrative standards may include the setting of date, time, and location of examinations, subject to the approval of the respective professional licensing boards. Notwithstanding any other provisions of law to the contrary, examination criteria, examination grading procedures, examination fees, examination passing score requirements, and other matters pertaining to the examination of applicants for licensure may be adopted by rules of the respective professional licensing boards as necessary to implement such examination standards. Examination standards, including examination criteria, grading procedures, and passing score requirements, developed in agreement or in conjunction with a national association of state boards or other related national association for the administration of a nationally recognized uniform examination may be adopted in lieu of state standards by the respective professional licensing boards.

(k) The division director shall prepare and maintain a roster containing the names and addresses of all current licensees for each of the various professional licensing boards. A copy of this roster shall be available to any person upon request at a fee prescribed by the division director sufficient to cover the cost of printing and distribution. The following shall be treated as confidential and need not be disclosed without the approval of the professional licensing board to which application is made:

(1) Applications and other personal information submitted by applicants, except to the applicant, staff, and the board;

(2) Information, favorable or unfavorable, submitted by a reference source concerning an applicant, except to the staff and the board;

(3) Examination questions and other examination materials, except to the staff and the board; and

(4) The deliberations of the board with respect to an application, an examination, a complaint, an investigation, or a disciplinary proceeding, except as may be contained in official board minutes.

(l) Funding for the office of the division director and the various professional licensing boards served by such office shall be contained in a common budget unit as defined in Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act." (Ga. L. 1931, p. 7, §§ 89, 89A; Code 1933, §§ 84-101, 84-102; Ga. L. 1943, p. 370, § 1; Ga. L. 1955, p. 323, § 1; Ga. L. 1975, p. 412, § 1; Ga. L. 1977, p. 758, § 1; Ga. L. 1981, p. 1898, § 1; Ga. L. 1990, p. 1965, § 1; Ga. L. 2000, p. 1706, § 2; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2010, p. 266, §§ 6, 7/SB 195.)

The 2009 amendment, effective July 1, 2009, substituted "State Personnel Administration" for "state merit system" near the end of subsection (c).

The 2010 amendment, effective May 20, 2010, added subsection (h.1) and, in subsection (j), substituted "may" for "shall" in the first and second sentences.

Cross references. — Expense allowance of General Assembly members and legal mileage allowance, §§ 28-1-8,

45-7-4, 50-19-7. Allowing inspection of public records generally, § 50-18-70 et seq.

Editor's notes. — Ga. L. 1981, p. 1898, § 5, not codified by the General Assembly, provided that that Act, § 1 of which amended this Code section, was not to be applicable to the Georgia Real Estate Commission and its functions, powers, and duties.

JUDICIAL DECISIONS

Georgia Board of Dentistry. — Service upon the joint-secretary of the state examining boards, in reliance upon the provisions of former Code 1933, §§ 84-101 and 84-102 (see O.C.G.A. § 43-1-2), was not sufficient to obtain the appearance of the individual members of the Georgia Board of Dentistry since the board was itself a legal entity capable of suing and

being sued under former Code 1933, § 84-102 (see O.C.G.A. § 43-11-2). *Clark v. Board of Dental Exmrs.*, 240 Ga. 289, 240 S.E.2d 250 (1977).

Cited in *Youmans v. Steele*, 217 Ga. 747, 125 S.E.2d 215 (1962); *Wall v. American Optometric Ass'n*, 379 F. Supp. 175 (N.D. Ga. 1974).

OPINIONS OF THE ATTORNEY GENERAL

Support personnel and executive directors. — Joint-secretary of state examining boards are given broad powers of appointment with respect to all support personnel and executive directors for the various examining boards. 1982 Op. Att'y Gen. No. 82-4.

Location of meetings. — State examining boards must hold all meetings in the capitol, except for examinations of applicants for licenses, which may be conducted at other designated places; it is clear that the boards cannot meet at such places as Jekyll Island. 1965-66 Op. Att'y Gen. No. 66-80.

Applicability. — Provisos contained in this section applied generally to all of the professional licensing boards. 1945-47 Op. Att'y Gen. p. 513. (see O.C.G.A. § 43-1-2).

State Building Administrative Board workers. — Persons who provide the services statutorily required to the State Building Administrative Board are employees of the Secretary of State and the duties of such persons are determined by delegation of authority made by the Secretary of State. 1975 Op. Att'y Gen. No. 75-43.

Quorum. — Majority of the total number of positions on a given licensing board is required to constitute a quorum as identified in O.C.G.A. § 43-1-2(h), and a majority of such quorum is necessary for board actions other than the specific actions set forth in O.C.G.A. § 43-1-19(a), which requires an affirmative finding by a majority of the board. 2003 Op. Att'y Gen. No. 2003-6.

43-1-3. Duties of division director; serving notice or process on boards through division director.

(a) It shall be the duty of the division director:

(1) To bring together and keep all records relating to the professional licensing boards;

(2) To receive all applications for licenses;

(3) With the consent of the board concerned, to schedule the time and place for examinations;

(4) To schedule the time and place for all hearings;

(5) To issue certificates upon authority of the professional licensing board concerned; and

(6) Except as otherwise provided by law, to collect all fees required by law in connection with the licensing of trades and professions under such boards and to remit the same to the state treasurer for deposit into the general fund of the state. Notwithstanding any other provision of law, the division director is authorized to retain all funds received as collection fees for use in defraying the cost of collection of fees required under this chapter; provided, however, that nothing in this Code section shall be construed so as to allow the division director to retain any funds required by the Constitution of Georgia to be paid into the state treasury; and provided, further, that the division director shall comply with all provisions of Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act," except Code Section 45-12-92, prior to expending any such funds.

(b) All orders and processes of the professional licensing boards shall be signed and attested by the division director, or his or her designee, in the name of the particular professional licensing board, with the seal of such board attached. Any notice or legal process necessary to be served upon any of the professional licensing boards may be served upon the division director. (Ga. L. 1931, p. 7, § 89; Code 1933, § 84-101; Ga. L. 1937, p. 208, § 2; Ga. L. 1967, p. 294, § 1; Ga. L. 1984, p. 22, § 43; Ga. L. 1993, p. 1402, § 18; Ga. L. 1997, p. 677, § 1; Ga. L. 2000, p. 1706, § 3; Ga. L. 2008, p. 1112, § 1/HB 1055; Ga. L. 2010, p. 863, § 3/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "state treasurer" for "director of the Office of Treasury and Fiscal Services" in the first sentence of paragraph (a)(6).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, "professional licensing" was substituted for "state

examining" in the second sentence of subsection (b).

Administrative rules and regulations. — Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of State Examining Boards, Joint Secretary, Chapter 295-1 et seq.

JUDICIAL DECISIONS

Service on joint-secretary cannot secure individual member's appearance. — Service upon the joint-secretary of the state examining boards, in reliance upon the provisions of former Code 1933, § 84-101 (see O.C.G.A. § 43-1-3), was not sufficient to obtain the appearance of the individual members of the Georgia Board

of Dentistry since the board is itself a legal entity capable of suing and being sued under former Code 1933, §§ 84-101 and 84-102 (see O.C.G.A. § 43-11-2). *Clark v. Board of Dental Exmrs.*, 240 Ga. 289, 240 S.E.2d 250 (1977).

Cited in *Youmans v. Steele*, 217 Ga. 747, 125 S.E.2d 215 (1962); *Wall v. Amer-*

ican Optometric Ass'n, 379 F. Supp. 175 (N.D. Ga. 1974); *Shepard v. Byrd*, 581 F. Supp. 1374 (N.D. Ga. 1984).

OPINIONS OF THE ATTORNEY GENERAL

Joint-secretary, not board electees, keeps records, receives license applications, and collects fees. — While a board had authority under former Code 1933, § 84-104 (see O.C.G.A. § 43-11-3) to elect from the board's members a president and such other officers as the board in the board's discretion may see fit, any application filed with or communication addressed to "such other officer" as the board in the board's discretion has seen fit to elect has no legal status since former Code 1933, § 84-101 (see O.C.G.A. § 43-1-3) clearly imposed upon the joint-secretary the duty to bring together and keep records relating to the several boards, to receive all applications for li-

censes, to collect all fees required by law, and to remit the fees to the Fiscal Division of the Department of Administrative Services (now Office of Treasury and Fiscal Services). 1963-65 Op. Att'y Gen. p. 182.

Joint-secretary must remit fees to Department of Administrative Services. — Fees collected by the Secretary of State (now the joint-secretary) as the Commissioner of Securities must be paid to the Fiscal Division of the Department of Administrative Services (now Office of Treasury and Fiscal Services) and those fees may not be retained as reimbursements for expenses of that office. 1969 Op. Att'y Gen. No. 69-13.

43-1-4. Expiration, renewal, and penalty dates of licenses and certificates; duration of validity; renewals.

(a) The division director shall determine the expiration, renewal, and penalty dates for each license and certificate issued by the professional licensing boards through the office of the division director which is subject to renewal. Before becoming effective, these expiration, renewal, and penalty dates must be approved by the respective professional licensing boards.

(b) Each license and certificate issued by the professional licensing boards through the office of the division director which are subject to renewal shall be valid for up to two years and shall be renewable biennially on the renewal date established by the division director, as approved by the respective professional licensing boards.

(c) The division director is authorized to adopt the necessary rules and regulations to implement the biennial renewal of licenses and certificates in such manner as to ensure that the number of renewals is reasonably evenly distributed throughout each two-year period. (Code 1933, § 84-104, enacted by Ga. L. 1972, p. 505, § 1; Ga. L. 1973, p. 1481, § 1; Ga. L. 1981, p. 1898, § 2; Ga. L. 2000, p. 1706, § 19.)

Editor's notes. — Ga. L. 1981, p. 1898, § 5, not codified by the General Assembly, provided that that Act, § 2 of which amended this Code section, was not to be applicable to the Georgia Real Estate

Commission and its functions, powers, and duties.

Administrative rules and regulations. — Renewal of certificates of registration and professional development re-

quirements, architects, Official Compilation of the Rules and Regulations of the

State of Georgia, State Board of Architects and Interior Designers, Chapter 50-6.

43-1-5. Investigators for professional licensing boards.

Persons hired for the purpose of conducting investigations for the professional licensing boards shall be designated as investigators and any person so designated shall have all the powers of a peace officer of this state when engaged in the enforcement of this title or of any of the laws creating or related to the professional licensing boards. Such investigators shall be authorized, upon the written approval of the division director, notwithstanding Code Sections 16-11-126 and 16-11-129, to carry firearms. (Code 1933, § 84-105, enacted by Ga. L. 1975, p. 412, § 2; Ga. L. 1984, p. 704, § 1; Ga. L. 1996, p. 381, § 2; Ga. L. 2000, p. 1706, § 4; Ga. L. 2010, p. 266, § 8/SB 195; Ga. L. 2010, p. 963, § 2-17/SB 308.)

The 2010 amendments. — The first 2010 amendment, effective May 20, 2010, deleted “of a caliber not greater than the standard police .38 handgun” following “firearms” at the end of the last sentence of subsection (a) and deleted former subsection (b), which read: “Any person designated as an investigator within the meaning of this Code section shall be considered to be a peace officer.” The second 2010 amendment, effective June 4, 2010, deleted “, 16-11-128,” following “Sections 16-11-126” in the middle of the last sentence of subsection (a). See the editor’s note for applicability.

Cross references. — Employment and

training of peace officers generally, T. 35, C. 8. Cease and desist order violations, § 43-14-12.1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, the designation “(a)” was deleted from the beginning of this Code section.

Editor’s notes. — Ga. L. 2010, p. 963, § 3-1, not codified by the General Assembly, provides, in part, that the amendment of this Code section shall apply to all offenses committed on and after June 4, 2010, and shall not affect any prosecutions for acts occurring before June 4, 2010, and shall not act as an abatement of any such prosecution.

43-1-6. Venue of actions involving professional licensing boards.

The venue of any action involving the members of any professional licensing board shall be governed by the laws of this state pertaining to venue. The division director shall not be considered a member of any such board in determining the venue of any such action; and no court shall have jurisdiction of any such action solely by virtue of the division director residing or maintaining a residence within its jurisdiction. (Code 1933, § 84-103, enacted by Ga. L. 1962, p. 539, § 1; Ga. L. 2000, p. 1706, § 19.)

Cross references. — Venue generally, Ga. Const. 1983, Art. VI, Sec. II and § 9-10-30 et seq.

JUDICIAL DECISIONS

Venue proper. — Venue of contractors' action seeking to restrain the Georgia State Licensing Board for Residential and General Contractors and a county from enforcing a licensing law, O.C.G.A. § 43-41-1 et seq., was proper in Muscogee County because there was substantial equitable relief sought that was common to the Board and to the resident county; the complaint alleged that enforcement of the licensing law by both the Board and the county would cause irreparable injury to

the contractors, and it asked that preliminary and permanent injunctions be issued against both the county and the Board enjoining and restraining those entities from exercising any of the powers, rights, or duties respecting enforcement of the licensing law. Ga. State Licensing Bd. for Residential & Gen. Contrs. v. Allen, 286 Ga. 811, 692 S.E.2d 343 (2010).

Cited in Georgia State Bd. of Dental Exmrs. v. Daniels, 137 Ga. App. 706, 224 S.E.2d 820 (1976).

RESEARCH REFERENCES

Am. Jur. 2d. — 77 Am. Jur. 2d, Venue, §§ 4 et seq., 28 et seq.

C.J.S. — 92A C.J.S., Venue, §§ 4, 5, 76, 77.

43-1-7. Determination of fees by professional licensing boards; refunds.

Each professional licensing board is authorized to charge an examination fee, license fee, license renewal fee, or similar fee and may establish the amount of the fee to be charged. Each fee so established shall be reasonable and shall be determined in such a manner that the total amount of fees charged by the professional licensing board shall approximate the total of the direct and indirect costs to the state of the operations of the board. Fees may be refunded for good cause, as determined by the division director. (Ga. L. 1978, p. 1517, § 1; Ga. L. 1981, p. 1898, § 4; Ga. L. 1984, p. 22, § 43; Ga. L. 2000, p. 1706, § 5.)

Editor's notes. — Ga. L. 1981, p. 1898, § 5, not codified by the General Assembly, provided that that Act, § 4 of which amended this Code section, was not to be applicable to the Georgia Real Estate Commission and its functions, powers, and duties.

Administrative rules and regula-

tions. — Fees, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Architects, Chapter 50-5.

Registered interior designer fees, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Architects, Chapter 50-12.

OPINIONS OF THE ATTORNEY GENERAL

State Board of Education does not have the power to charge a fee for the certification of teachers and other person-

nel employed in the public schools of this state. 1983 Op. Att'y Gen. No. 83-63.

43-1-8. Disposition of fees.

Reserved. Repealed by Ga. L. 1984, p. 22, § 43, effective February 3, 1984.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2007, this Code section number was designated as reserved.

Editor's notes. — This Code section was based on Ga. L. 1978, p. 1517, § 2.

43-1-9. Point credit for veterans taking examinations given by professional licensing boards.

Any applicant taking an examination required by any professional licensing board except the State Board of Accountancy and the Georgia Board of Nursing shall receive points in the following manner:

(1) Any applicant who served on active duty in the armed forces of the United States or on active duty in a reserve component of the armed forces of the United States, including the National Guard, for a period of one year or more, of which at least 90 days were served during wartime or during any conflict when military personnel were committed by the President of the United States, shall be entitled to a credit of five points. Such points shall be added by the person grading the examination to the grade made by the applicant in answering the questions propounded in any such examination;

(2) Any applicant who is a disabled veteran and who served on active duty in the armed forces of the United States or on active duty in a reserve component of the armed forces of the United States, including the National Guard, during wartime or during any conflict when military personnel were committed by the President of the United States shall be entitled to a credit of five points if the disability was for an injury or illness incurred in the line of duty and such disability is officially rated at less than 10 percent at the time of taking the examination. Such points shall be added by the person grading the examination to the grade made by the applicant in answering the questions propounded in any such examination; and

(3) Any applicant who is a disabled veteran who served on active duty in the armed forces of the United States or on active duty in a reserve component of the armed forces of the United States, including the National Guard, during wartime or during any conflict when military personnel were committed by the President of the United States shall be entitled to a credit of ten points if the disability was for an injury or illness incurred in the line of duty and such disability is officially rated at 10 percent or above at the time of taking the examination. Such points shall be added by the person grading the examination to the grade made by the applicant in answering questions propounded in any such examination. (Ga. L. 1960, p. 1172, § 1; Ga. L. 1964, p. 761, § 1; Ga. L. 1968, p. 1213, § 1; Ga. L. 1982, p. 3, § 43; Ga. L. 2000, p. 1706, § 19; Ga. L. 2007, p. 483, § 1/SB 114; Ga. L. 2010, p. 266, § 9/SB 195.)

The 2010 amendment, effective May 20, 2010, in the introductory paragraph, substituted "required" for "given" and inserted "and the Georgia Board of Nursing" near the middle.

Cross references. — Civil service preference for veterans, Ga. Const. 1983, Art. IV, Sec. III, Para. II and § 45-2-20 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Veterans' preference in examinations not in conflict with preference in hiring. — There is no conflict between the preference in employment granted veterans under Ga. Const. 1976, Art. IV, Sec. VI, Para. II (see Ga. Const. 1983, Art. IV, Sec. III, Para. II), and extra points granted to veterans when taking licensure examinations offered by the various state examining boards under Ga. L. 1968, p. 1213, § 1 (see O.C.G.A. § 43-1-9), since the two provisions speak to separate types of veterans preferences. 1978 Op. Att'y Gen. No. 78-69.

Purpose of Ga. L. 1960, p. 1172, § 1 (see O.C.G.A. § 43-1-9). — Intention of Ga. L. 1960, p. 1172, §§ 1-5 (see O.C.G.A. §§ 43-1-9 through 43-1-13) is to require that qualifying veterans be allowed a preference in grants of professional licenses or certificates of registration. 1976 Op. Att'y Gen. No. 76-21.

Ga. L. 1960, p. 1172, § 1 (see O.C.G.A. § 43-1-9) was mandatory, leaving board no discretion. — As each section employs the word "shall" in its provisions, Ga. L. 1960, p. 1172, §§ 1-5 (see O.C.G.A. §§ 43-1-9 through 43-1-13) were mandatory and allow the board no discretion in application of preference points in appropriate cases. 1976 Op. Att'y Gen. No. 76-21.

Veterans' preference points should be credited to examination scores of eligible candidates for registration by the State Board of Examination, Qualification, and Registration of Architects. 1976 Op. Att'y Gen. No. 76-21.

In awarding veterans' credit points, board should utilize the disability rating determined by the veterans' administration formulated pursuant to 38 U.S.C. § 301 et seq. 1980 Op. Att'y Gen. No. 80-73.

Board should ascertain numerical score when "fail" grade is reported. — Board should consult with the board's grading service to determine if a numerical score could be provided in those cases in which a "fail" grade is presently reported; the board might also consider the possibility of grading the board's own examinations to determine a numerical score. 1976 Op. Att'y Gen. No. 76-21.

Preference not applied retroactively. — Applicants who took an examination and received scores prior to the effective date of Ga. L. 1960, p. 1172, §§ 1, 2 (see O.C.G.A. §§ 43-1-9 and 43-1-10) cannot have veterans' preference points applied to those scores. 1972 Op. Att'y Gen. No. 72-119.

RESEARCH REFERENCES

Am. Jur. 2d. — 77 Am. Jur. 2d, Veterans and Veterans' Laws, § 89 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 37 et seq.

43-1-10. Credit to veteran's grades when examination given in parts or by subject.

If an examination given by a professional licensing board is required in parts or by subjects and the applicant is required to make a minimum grade on each of the parts or subjects, the points to which the applicant is entitled shall be added to the grade made on each part or

subject before the average of his or her grade on all of the parts or subjects is determined. (Ga. L. 1960, p. 1172, § 2; Ga. L. 2000, p. 1706, § 19; Ga. L. 2010, p. 266, § 10/SB 195.)

The 2010 amendment, effective May 20, 2010, substituted “required” for “given” near the beginning and inserted “or her” near the end of this Code section.

OPINIONS OF THE ATTORNEY GENERAL

Purpose of provisions. — Intention of Ga. L. 1960, p. 1172, §§ 1-5 (see O.C.G.A. §§ 43-1-9 through 43-1-13) was to require that qualifying veterans be allowed a preference in grants of professional licenses or certificates of registration. 1976 Op. Att’y Gen. No. 76-21.

Preference not applied retroactively. — Applicants who took an examination and received scores prior to the effective date of Ga. L. 1960, p. 1172, §§ 1, 2 (see O.C.G.A. §§ 43-1-9 and 43-1-10) cannot have veterans’ preference points applied to those scores. 1972 Op. Att’y Gen. No. 72-119.

Provisions mandatory, leaving board no discretion. — As each section employs the word “shall” in the statute’s provisions, Ga. L. 1960, p. 1172, §§ 1-5 (see O.C.G.A. §§ 43-1-9 through 43-1-13)

are mandatory and allow the board no discretion in application of preference points in appropriate cases. 1976 Op. Att’y Gen. No. 76-21.

Veterans’ preference points should be credited to examination scores of eligible candidates for registration by the State Board for Examination, Qualification, and Registration of Architects. 1976 Op. Att’y Gen. No. 76-21.

Board should ascertain numerical score when “fail” grade is reported. — Board should consult with the board’s grading service to determine if a numerical score could be provided in those cases in which a “fail” grade is presently reported; the board might also consider the possibility of grading the board’s own examinations to determine a numerical score. 1976 Op. Att’y Gen. No. 76-21.

RESEARCH REFERENCES

Am. Jur. 2d. — 77 Am. Jur. 2d, Veterans and Veterans’ Laws, § 89 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 37 et seq.

43-1-11. Veteran’s examination to be graded prior to determination of eligibility for credit.

A person grading an examination required by a professional licensing board shall first grade the examination without reference to veteran credit, determining thereafter from the proof submitted whether an applicant is a veteran and is entitled to such credit; if so, the credit shall be added; and if after such addition the applicant equals or exceeds the grade required to pass the examination, the applicant shall be entitled to be certified as having passed the examination. (Ga. L. 1960, p. 1172, § 3; Ga. L. 2000, p. 1706, § 19; Ga. L. 2010, p. 266, § 11/SB 195.)

The 2010 amendment, effective May 20, 2010, substituted “required” for “given” near the beginning of this Code section.

OPINIONS OF THE ATTORNEY GENERAL

Purpose of provisions. — Intention of Ga. L. 1960, p. 1172, §§ 1-5 (see O.C.G.A. §§ 43-1-9 through 43-1-13) was to require that qualifying veterans be allowed a preference in grants of professional licenses or certificates of registration. 1976 Op. Att'y Gen. No. 76-21.

Board should ascertain numerical score when "fail" grade is reported. — Board should consult with the board's grading service to determine if a numerical score could be provided in those cases

in which a "fail" grade is presently reported; the board might also consider the possibility of grading the board's own examinations to determine a numerical score. 1976 Op. Att'y Gen. No. 76-21.

Veterans' preference points should be credited to examination scores of eligible candidates for registration by the State Board for Examination, Qualification, and Registration of Architects. 1976 Op. Att'y Gen. No. 76-21.

RESEARCH REFERENCES

Am. Jur. 2d. — 77 Am. Jur. 2d, Veterans and Veterans' Laws, § 116 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 37 et seq.

43-1-12. Duty of division director to inform applicants of availability of veteran credit; rules and regulations for implementing veteran credit program.

It shall be the duty of the division director to inform applicants taking the examination of the provisions of Code Sections 43-1-9 through 43-1-11 and Code Section 43-1-13. The division director shall make such rules and regulations as are necessary in order to carry out the terms of Code Sections 43-1-9 through 43-1-11 and Code Section 43-1-13. (Ga. L. 1960, p. 1172, § 4; Ga. L. 1981, p. 1898, § 3; Ga. L. 1999, p. 81, § 43; Ga. L. 2000, p. 1706, § 19.)

Editor's notes. — Ga. L. 1981, p. 1898, § 5, not codified by the General Assembly, provided that that Act, § 3 of which amended this Code section, was not to be

applicable to the Georgia Real Estate Commission and its functions, powers, and duties.

OPINIONS OF THE ATTORNEY GENERAL

Purpose of provisions. — Intention of Ga. L. 1960, p. 1172, §§ 1-5 (see O.C.G.A. §§ 43-1-9 through 43-1-13) was to require that qualifying veterans be allowed a preference in grants of professional licenses or certificates of registration. 1976 Op. Att'y Gen. No. 76-21.

Provisions mandatory, leaving board no discretion. — As each section employs the word "shall" in the statute's provisions, Ga. L. 1960, p. 1172, §§ 1-5 (see O.C.G.A. §§ 43-1-9 through 43-1-13) were mandatory and allows the board no

discretion in application of preference points in appropriate cases. 1976 Op. Att'y Gen. No. 76-21.

Veterans' preference points should be credited to examination scores of eligible candidates for registration by the State Board of Examination, Qualification, and Registration of Architects. 1976 Op. Att'y Gen. No. 76-21.

Board should ascertain numerical score when "fail" grade is reported. — Board should consult with the board's grading service to determine if a numeri-

cal score could be provided in those cases in which a "fail" grade is presently reported; the board might also consider the

possibility of grading the board's own examinations to determine a numerical score. 1976 Op. Att'y Gen. No. 76-21.

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 37 et seq.

43-1-13. Inapplicability of veteran credit provisions to applicants who were not honorably discharged.

The provisions of Code Sections 43-1-9 through 43-1-12 relating to points to be allowed to veterans shall apply to any applicant, male or female, who comes within the classes specified in those Code sections except that such provisions shall not apply in any instance to an applicant who has not been honorably discharged. (Ga. L. 1960, p. 1172, § 5.)

OPINIONS OF THE ATTORNEY GENERAL

Purpose of provisions. — Intention of Ga. L. 1960, p. 1172, §§ 1-5 (see O.C.G.A. §§ 43-1-9 through 43-1-13) was to require that qualifying veterans be allowed a preference in grants of professional licenses or certificates of registration. 1976 Op. Att'y Gen. No. 76-21.

Veterans' preference points should be credited to examination scores of eligible candidates for registration by the State Board for Examination, Qualification, and Registration of Architects. 1976 Op. Att'y Gen. No. 76-21.

Provisions mandatory, leaving board no discretion. — As each section employs the word "shall" in the statute's

provisions, Ga. L. 1960, p. 1172, §§ 1-5 (see O.C.G.A. §§ 43-1-9 through 43-1-13) were mandatory and allows the board no discretion in application of preference points in appropriate cases. 1976 Op. Att'y Gen. No. 76-21.

Board should ascertain numerical score when "fail" grade is reported. — Board should consult with the board's grading service to determine if a numerical score could be provided in those cases in which a "fail" grade is presently reported; the board might also consider the possibility of grading the board's own examinations to determine a numerical score. 1976 Op. Att'y Gen. No. 76-21.

RESEARCH REFERENCES

Am. Jur. 2d. — 77 Am. Jur. 2d, Veterans and Veterans' Laws, § 116 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 37 et seq.

43-1-14. Authority of Governor to appoint qualified persons to professional licensing boards.

The Governor is authorized to appoint any person who is otherwise qualified as provided by law to serve as a member of any professional licensing board for a regular term or for an unexpired term, notwithstanding the fact that the law creating such board requires the Governor to appoint members from a list of nominees submitted by a

private organization or association. (Ga. L. 1980, p. 1162, § 1; Ga. L. 2000, p. 1706, § 19.)

Cross references. — Appointment powers of Governor generally, § 45-12-50 et seq.

Law reviews. — For article, "Legisla-

tive Delegation of Executive Power of Appointment to Private Organizations Held Unconstitutional," see 16 Ga. St. B.J. 129 (1980).

43-1-15. Itinerant entertainers.

(a) All carnivals, road shows, and tent shows and all other itinerant entertainment not presented within any regularly licensed theater, auditorium, or other building permitted to be used for the offering of entertainment for value shall, before opening to the public or offering any amusement, entertainment, or other service to the public for value within this state:

(1) Designate a resident of this state as agent and lawful attorney in fact upon whom may be served all summons or other lawful processes in any action or proceeding against such carnival, circus, road show, tent show, or other itinerant show or itinerant entertainment for any action arising as a result of its appearance in this state. The name and address of such resident agent shall be filed with the judge of the probate court of each county in which such carnival, circus, or show is to be held. If no resident agent has been designated, the Secretary of State shall become such agent with all the foregoing authority, and service of such process shall be made by serving a copy of the petition with process attached thereto on the Secretary of State or an employee in his office designated by the Secretary of State as an agent to receive service in his name, or his successor in office, along with a copy of the affidavit to be submitted to the court pursuant to this Code section, and such service shall be sufficient service upon any such carnival, circus, or show, provided that notice of such service and a copy of the petition and process are forthwith sent by registered or certified mail or statutory overnight delivery by the plaintiff or his agent to the defendant, if its address is known, and that the defendant's return receipt and the plaintiff's affidavit of compliance herewith are appended to the summons or other process and are filed with said summons, petition, and other papers in the case in the court in which the action is pending. The Secretary of State shall charge and collect a fee as set out in Code Section 45-13-26 for service of process on him under this Code section;

(2) Secure an insurance policy or a bond, affording coverage to such carnival, circus, or show for the extent of its stay within this state, which insurance policy or bond shall be subject to any personal injury or death or property damages to the following limits:

(A) An indemnity bond subject to a limit of \$100,000.00; or

(B) An insurance policy or public liability bond subject to a limit of \$50,000.00 for personal injury or death or property damage sustained by any one person and subject to a limit of \$100,000.00 for personal injuries or death or property damages sustained by two or more persons as a result of any one accident or event; and

(3) File a copy of such insurance policy or bond with the judge of the probate court in the county where the carnival, circus, or show is to be held or with both the judge of the probate court and the Secretary of State. The Secretary of State is authorized and directed to issue, upon the request of any carnival, circus, or show filing a copy of such insurance policy or bond in his office, a certificate of filing, stating the coverage afforded by the policy or bond and the effective dates, which certificate may be filed with the judge of the probate court of the county where the carnival, circus, or show is to be held in lieu of a copy of the policy or bond. The Secretary of State is authorized to prescribe and require such terms and conditions in such policies as he may deem necessary or advisable to protect the interests of the public in carrying out the purposes of this Code section, and he is further authorized to prescribe and require use of a standard form of bond and policy for use under this Code section.

(b) Any owner, manager, employee, or other person, excluding land-owners on whose land a carnival, circus, road show, or itinerant show is operated, who shall cause or grant permission, either actual or constructive, to any carnival, circus, road show, tent show, or other itinerant show or itinerant entertainment or any part thereof to operate in violation of this Code section shall be guilty of a misdemeanor. (Ga. L. 1957, p. 406, §§ 1, 2; Ga. L. 1959, p. 106, § 1; Ga. L. 1959, p. 160, § 1; Ga. L. 1965, p. 235, § 1; Ga. L. 1983, p. 1474, § 3; Ga. L. 1984, p. 22, § 43; Ga. L. 1989, p. 364, § 3; Ga. L. 1994, p. 97, § 43; Ga. L. 2000, p. 1589, § 3.)

Cross references. — Obtaining fire prevention regulatory license by traveling motion picture shows, carnivals, and circuses, § 25-2-20. Authority of counties to impose license fees on carnivals or circuses, §§ 48-13-9, 48-13-10.

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to paragraph (a)(1) is applicable with respect to notices delivered on or after July 1, 2000.

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Bonds and liability policies filed under this section include coverage for property damage and personal injuries.

1958-59 Op. Att'y Gen. p. 22 (see O.C.G.A. § 43-1-15).

RESEARCH REFERENCES

ALR. — Validity of statute or ordinance which requires liability or indemnity insurance or bond as condition of license for conducting business or profession, 120 ALR 950.

43-1-16. Senate confirmation of appointments to professional licensing boards.

Each person appointed by the Governor as a member of a professional licensing board shall be confirmed by the Senate; and any such appointment made when the Senate is not in session shall be effective until the appointment is acted upon by the Senate. (Code 1981, § 43-1-16, enacted by Ga. L. 1984, p. 552, § 1; Ga. L. 2000, p. 1706, § 19.)

43-1-17. Removal from office of member of a professional licensing board.

The Governor, after notice and opportunity for hearing, may remove from office any member of a professional licensing board for any of the following:

- (1) Inability or neglect to perform the duties required of members;
- (2) Incompetence; or
- (3) Dishonest conduct. (Code 1981, § 43-1-17, enacted by Ga. L. 1984, p. 552, § 1; Ga. L. 2000, p. 1706, § 19.)

43-1-18. Eligibility of consumer members of professional licensing boards to vote on all matters.

Without affecting the eligibility to vote of any other member of a professional licensing board, each consumer member of a professional licensing board shall be eligible to vote on all matters brought before that board. (Code 1981, § 43-1-18, enacted by Ga. L. 1984, p. 552, § 1; Ga. L. 2000, p. 1706, § 19.)

43-1-19. Grounds for refusing to grant or revoking licenses; application of Administrative Procedure Act; subpoena powers; disciplinary actions; judicial review; reinstatement; investigations; complaints; notice; failure to appear; voluntary surrender; application.

(a) A professional licensing board shall have the authority to refuse to grant a license to an applicant therefor or to revoke the license of a person licensed by that board or to discipline a person licensed by that

board, upon a finding by a majority of the entire board that the licensee or applicant has:

(1) Failed to demonstrate the qualifications or standards for a license contained in this Code section, or under the laws, rules, or regulations under which licensure is sought or held; it shall be incumbent upon the applicant to demonstrate to the satisfaction of the board that he or she meets all the requirements for the issuance of a license, and, if the board is not satisfied as to the applicant's qualifications, it may deny a license without a prior hearing; provided, however, that the applicant shall be allowed to appear before the board if he or she so desires;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of a business or profession licensed under this title or on any document connected therewith; or practiced fraud or deceit or intentionally made any false statement in obtaining a license to practice the licensed business or profession; or made a false statement or deceptive registration with the board;

(3) Been convicted of any felony or of any crime involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States; as used in this paragraph and paragraph (4) of this subsection, the term "felony" shall include any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere; and, as used in this paragraph, the term "conviction" shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;

(4) Been arrested, charged, and sentenced for the commission of any felony, or any crime involving moral turpitude, where:

(A) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(B) An adjudication of guilt or sentence was otherwise withheld or not entered on the charge, except with respect to a plea of nolo contendere.

The order entered pursuant to the provisions of Article 3 of Chapter 8 of Title 42, relating to probation of first offenders, or other first offender treatment shall be conclusive evidence of arrest and sentencing for such crime;

(5) Had his or her license to practice a business or profession licensed under this title revoked, suspended, or annulled by any lawful licensing authority other than the board; or had other disciplinary action taken against him or her by any such lawful licensing authority other than the board; or was denied a license by any such

lawful licensing authority other than the board, pursuant to disciplinary proceedings; or was refused the renewal of a license by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings;

(6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or applicant to practice a business or profession licensed under this title, or of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of the licensed business or profession but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness; unprofessional conduct shall also include any departure from, or the failure to conform to, the minimal reasonable standards of acceptable and prevailing practice of the business or profession licensed under this title;

(7) Knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person or any licensee whose license has been suspended or revoked by a professional licensing board to practice a business or profession licensed under this title or to practice outside the scope of any disciplinary limitation placed upon the licensee by the board;

(8) Violated a statute, law, or any rule or regulation of this state, any other state, the professional licensing board regulating the business or profession licensed under this title, the United States, or any other lawful authority (without regard to whether the violation is criminally punishable), which statute, law, or rule or regulation relates to or in part regulates the practice of a business or profession licensed under this title, when the licensee or applicant knows or should know that such action is violative of such statute, law, or rule; or violated a lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or license reinstatement;

(9) Been adjudged mentally incompetent by a court of competent jurisdiction within or outside this state; any such adjudication shall automatically suspend the license of any such person and shall prevent the reissuance or renewal of any license so suspended for as long as the adjudication of incompetence is in effect;

(10) Displayed an inability to practice a business or profession licensed under this title with reasonable skill and safety to the public or has become unable to practice the licensed business or profession with reasonable skill and safety to the public by reason of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material;

(11) Failed to comply with an order for child support as defined by Code Section 19-11-9.3; it shall be incumbent upon the applicant or licensee to supply a notice of release to the board from the child support agency within the Department of Human Services indicating that the applicant or licensee has come into compliance with an order for child support so that a license may issue or be granted if all other conditions for licensure are met; or

(12) Failed to enter into satisfactory repayment status and is a borrower in default as defined by Code Section 20-3-295; it shall be incumbent upon the applicant or licensee to supply a notice of release to the board from the Georgia Higher Education Assistance Corporation indicating that the applicant or licensee has entered into satisfactory repayment status so that a license may be issued or granted if all other conditions for licensure are met.

(b) The provisions of Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” with respect to emergency action by a professional licensing board and summary suspension of a license are adopted and incorporated by reference into this Code section.

(c) For purposes of this Code section, a professional licensing board may obtain, through subpoena by the division director, upon reasonable grounds, any and all records relating to the mental or physical condition of a licensee or applicant, and such records shall be admissible in any hearing before the board.

(d) When a professional licensing board finds that any person is unqualified to be granted a license or finds that any person should be disciplined pursuant to subsection (a) of this Code section or the laws, rules, or regulations relating to the business or profession licensed by the board, the board may take any one or more of the following actions:

(1) Refuse to grant or renew a license to an applicant;

(2) Administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the licensee;

(3) Suspend any license for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said license;

(4) Limit or restrict any license as the board deems necessary for the protection of the public;

(5) Revoke any license;

(6) Condition the penalty upon, or withhold formal disposition pending, the applicant’s or licensee’s submission to such care, counseling, or treatment as the board may direct;

(7) Impose a fine not to exceed \$500.00 for each violation of a law, rule, or regulation relating to the licensed business or profession; or

(8) Impose on a licensee or applicant fees or charges in an amount necessary to reimburse the professional licensing board for the administrative and legal costs incurred by the board in conducting an investigative or disciplinary proceeding.

(e) In addition to and in conjunction with the actions described in subsection (d) of this Code section, a professional licensing board may make a finding adverse to the licensee or applicant but withhold imposition of judgment and penalty; or it may impose the judgment and penalty but suspend enforcement thereof and place the licensee on probation, which probation may be vacated upon noncompliance with such reasonable terms as the board may impose.

(f) Initial judicial review of a final decision of a professional licensing board shall be had solely in the superior court of the county of domicile of the board. The court may assess reasonable and necessary attorney's fees and expenses of litigation in any such review if, upon the motion of any party or the court itself, it finds that an attorney or any party aggrieved by an action of the board appealed such action of the board or any part thereof when such appeal lacked substantial justification or when such appeal or any part thereof was interposed for delay or harassment or if it finds that an attorney or aggrieved party unnecessarily expanded the proceeding by other improper conduct. As used in this subsection, "lacked substantial justification" means substantially frivolous, substantially groundless, or substantially vexatious.

(g) In its discretion, a professional licensing board may reinstate a license which has been revoked or issue a license which has been denied or refused, following such procedures as the board may prescribe by rule; and, as a condition thereof, it may impose any disciplinary or corrective method provided in this Code section or the laws relating to the licensed business or profession.

(h)(1) The division director is vested with the power and authority to make, or cause to be made through employees or agents of the division, such investigations as he or she or a respective board may deem necessary or proper for the enforcement of the provisions of this Code section and the laws relating to businesses and professions licensed by that board. Any person properly conducting an investigation on behalf of a professional licensing board shall have access to and may examine any writing, document, or other material relating to the fitness of any licensee or applicant. The division director or his or her appointed representative may issue subpoenas to compel access to any writing, document, or other material upon a determination that reasonable grounds exist for the belief that a violation of

this Code section or any other law relating to the practice of the licensed business or profession subject to regulation or licensing by such board may have taken place.

(2) The results of all investigations initiated by the board shall be reported solely to the board, and the records of such investigations shall be kept for the board by the division director, with the board retaining the right to have access at any time to such records. No part of any such records shall be released, except to the board, for any purpose other than a hearing before the board, nor shall such records be subject to subpoena; provided, however, that the board shall be authorized to release such records to another enforcement agency or lawful licensing authority.

(3) If a licensee is the subject of a board inquiry, all records relating to any person who receives services rendered by that licensee in his or her capacity as licensee shall be admissible at any hearing held to determine whether a violation of this chapter has taken place, regardless of any statutory privilege; provided, however, that any documentary evidence relating to a person who received those services shall be reviewed in camera and shall not be disclosed to the public.

(4) The board shall have the authority to exclude all persons during its deliberations on disciplinary proceedings and to discuss any disciplinary matter in private with a licensee or applicant and the legal counsel of that licensee or applicant.

(5) When a member of the public files a complaint with a professional licensing board or the division director against a licensee, within 30 days after the conclusion of the investigation of such complaint, the professional licensing board or the division director shall notify the complainant of the disposition of such complaint. Such notification shall include whether any action was taken by the board with regard to such complaint and the nature of such action. In addition, the division director and the board shall upon request by the complainant advise the complainant as to the status of the complaint during the period of time that such complaint is pending.

(i) A person, firm, corporation, association, authority, or other entity shall be immune from civil and criminal liability for reporting or investigating the acts or omissions of a licensee or applicant which violate the provisions of subsection (a) of this Code section or any other provision of law relating to a licensee's or applicant's fitness to practice a business or profession licensed under this title or for initiating or conducting proceedings against such licensee or applicant, if such report is made or action is taken in good faith, without fraud or malice. Any person who testifies or who makes a recommendation to a profes-

sional licensing board in the nature of peer review, in good faith, without fraud or malice, before the board in any proceeding involving the provisions of subsection (a) of this Code section or any other law relating to a licensee's or applicant's fitness to practice the business or profession licensed by the board shall be immune from civil and criminal liability for so testifying.

(j) Neither the issuance of a private reprimand nor the denial of a license by reciprocity nor the denial of a request for reinstatement of a revoked license nor the refusal to issue a previously denied license shall be considered to be a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; notice and hearing within the meaning of said chapter shall not be required, but the applicant or licensee shall be allowed to appear before the board if he or she so requests. A board may resolve a pending action by the issuance of a letter of concern. Such letter shall not be considered a disciplinary action or a contested case under Chapter 13 of Title 50 and shall not be disclosed to any person except the licensee or applicant.

(k) If any licensee or applicant after reasonable notice fails to appear at any hearing of the professional licensing board for that licensee or applicant, the board may proceed to hear the evidence against such licensee or applicant and take action as if such licensee or applicant had been present. A notice of hearing, initial or recommended decision, or final decision of the board in a disciplinary proceeding shall be served personally upon the licensee or applicant or served by certified mail or statutory overnight delivery, return receipt requested, to the last known address of record with the board. If such material is served by certified mail or statutory overnight delivery and is returned marked "unclaimed" or "refused" or is otherwise undeliverable and if the licensee or applicant cannot, after diligent effort, be located, the division director, or his or her designee, shall be deemed to be the agent for service for such licensee or applicant for purposes of this Code section, and service upon that director, or that director's designee, shall be deemed to be service upon the licensee or applicant.

(l) The voluntary surrender of a license or the failure to renew a license by the end of an established penalty period shall have the same effect as a revocation of said license, subject to reinstatement in the discretion of a board. A board may restore and reissue a license to practice under the law relating to that board and, as a condition thereof, may impose any disciplinary sanction provided by this Code section or the law relating to that board.

(m) This Code section shall apply equally to all licensees or applicants whether individuals, partners, or members of any other incorporated or unincorporated associations, corporations, limited liability companies, or other associations of any kind whatsoever.

(n) Regulation by a professional licensing board of a business or profession licensed under this title shall not exempt that business or profession from regulation pursuant to any other applicable law, including but not limited to Part 2 of Article 15 of Chapter 1 of Title 10, the “Fair Business Practices Act of 1975.”

(o) Subsections (a), (d), and (e) of this Code section shall be supplemental to and shall not operate to prohibit any professional licensing board from acting pursuant to those provisions of law which may now or hereafter authorize other disciplinary grounds and actions for that particular board. In cases where those other provisions of law so authorize other disciplinary grounds and actions but subsection (a), (d), or (e) of this Code section limit such grounds or actions, those other provisions shall apply. (Code 1981, § 43-1-19, enacted by Ga. L. 1984, p. 552, § 1; Ga. L. 1990, p. 1965, § 2; Ga. L. 1993, p. 123, § 4; Ga. L. 1994, p. 97, § 43; Ga. L. 1996, p. 453, § 13; Ga. L. 1996, p. 776, §§ 1, 2; Ga. L. 1997, p. 677, § 2; Ga. L. 1998, p. 1094, § 10; Ga. L. 2000, p. 1589, § 3; Ga. L. 2000, p. 1706, § 6; Ga. L. 2003, p. 422, § 1; Ga. L. 2009, p. 453, § 2-2/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted “Department of Human Services” for “Department of Human Resources” in paragraph (a)(11).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, paragraph (d)(9) as added by Ga. L. 1996, p. 776, § 1, was redesignated as paragraph (d)(8).

Editor’s notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to subsection (k) is applicable with respect to notices delivered on or after July 1, 2000.

JUDICIAL DECISIONS

Licensee must be allowed access to information. — Licensee facing the possibility of the loss of a license/livelihood must be allowed access to information held by the board that is exculpatory. *Wills v. Composite State Bd. of Medical Exmrs.*, 259 Ga. 549, 384 S.E.2d 636 (1989).

Release of file not prohibited under § 43-1-19(h)(2). — When plaintiff sought portions of the board’s file for the express purpose of preparing for a hearing before the board, the release of the file was not prohibited by O.C.G.A. §§ 43-1-19(h)(2) or other statutory provisions. *Wills v. Composite State Bd. of Medical Exmrs.*, 259 Ga. 549, 384 S.E.2d 636 (1989).

Statements to board made in good faith privileged. — Attorney’s statements about a psychologist to the State Board of Examiners of Psychologists were

privileged under O.C.G.A. § 43-1-19(i) because the statements were made in good faith because of a concern that the psychologist’s custody recommendations were improperly made without a proper evaluation of both parents, the children, and relevant witnesses to the detriment of the children involved in cases in which the psychologist testified; thus, the attorney could not be held liable in the psychologist’s action claiming tortious interference with the psychologist’s business relations, contracts, trade, and profession. *Farrar v. Macie*, 297 Ga. App. 192, 676 S.E.2d 840 (2009).

Judicial review not precluded by issuance of letter of concern. — When the Georgia Board of Dentistry conducted an adjudicatory hearing, made findings of fact justifying discipline, and issued a letter of concern, the fact that the Board

could have issued a letter of concern without such procedures did not preclude judicial review since the sanction was issued

as the result of contested case proceedings. *Thebaut v. Georgia Bd. of Dentistry*, 235 Ga. App. 194, 509 S.E.2d 125 (1998).

OPINIONS OF THE ATTORNEY GENERAL

Power of board to restore license revoked for failure to renew. — State Board of Physical Therapy may, in the board's discretion, require an individual whose license has been revoked by operation of law for failure to renew the license by the end of an established penalty period to comply with all relevant requirements for the issuance of a new license as a condition of reinstatement. 1984 Op. Att'y Gen. No. 84-64.

Construction with § 43-33-16 or § 43-33-18(c). — To the extent that subsections (g) and (l) of O.C.G.A. § 43-1-19 are later legislative enactments than O.C.G.A. § 43-33-16 or O.C.G.A. § 43-33-18(c), subsection (g) and (l) of O.C.G.A. § 43-1-19 would control in the

case of a conflict. 1984 Op. Att'y Gen. No. 84-64.

Only actual conflict between O.C.G.A. §§ 43-1-19(g) and (l) and 43-33-16 relates to the discretion of the State Board of Physical Therapy to restore a license and to impose conditions therefor. 1984 Op. Att'y Gen. No. 84-64.

Quorum. — Majority of the total number of positions on a given licensing board is required to constitute a quorum as identified in O.C.G.A. § 43-1-2(h), and a majority of such quorum is necessary for board actions other than the specific actions set forth in O.C.G.A. § 43-1-19(a), which requires an affirmative finding by a majority of the board. 2003 Op. Att'y Gen. No. 03-6.

RESEARCH REFERENCES

ALR. — Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician,

dentist, or other licensed healer, 59 ALR4th 1104.

43-1-19.1. Waiver of deductibles or copayments in health insurance plans; deceptive or misleading advertising.

(a) For the purposes of applicable provisions of Code Section 43-1-19, it shall be considered a deceptive or misleading practice for any person duly licensed and authorized to provide any type of health care services to advertise, as an inducement to attract patients, the waiver of a deductible or copayment required to be made to such person under the patient's health insurance policy or plan.

(b) This Code section shall not apply to nonprofit community health centers which primarily serve indigent patients.

(c) Notwithstanding the provisions of any other law of this Code to the contrary, it shall not be considered a misleading, fraudulent, or deceptive act for a provider to waive occasionally such a deductible or copayment required to be made under the patient's health insurance contract, policy, or plan if the waiver is authorized by the insurer or if the waiver is based on an evaluation of the individual patient and is not a regular business practice of the person providing the health care services. (Code 1981, § 43-1-19.1, enacted by Ga. L. 1992, p. 2488, § 1.)

43-1-19.2. License applications to include questions on prior revocation or denial of license.

Each application for a license to practice a profession or business to be issued by a professional licensing board or any agency of the state shall include a question as to whether the applicant for such license:

(1) Has had revoked or suspended or otherwise sanctioned any license issued to the applicant by any board or agency in Georgia or any other state; or

(2) Was denied issuance of or, pursuant to disciplinary proceedings, refused renewal of a license by any board or agency in Georgia or any other state.

The question shall be answered under oath and the answer shall include the name of the board or agency which revoked, suspended, denied, refused renewal of, or otherwise sanctioned the license. (Code 1981, § 43-1-19.2, enacted by Ga. L. 1993, p. 427, § 1; Ga. L. 2000, p. 1706, § 19.)

43-1-20. Actions to enjoin unlicensed practice.

A professional licensing board, the division director, or the appropriate prosecuting attorney may bring an action to enjoin the unlicensed practice by any person of a profession or business required to be licensed by a professional licensing board. The action to restrain and enjoin such unlicensed practice shall be brought in the superior court of the county where the unlicensed person resides. It shall not be necessary to allege or prove that there is no adequate remedy at law to obtain an injunction under this Code section. (Code 1981, § 43-1-20, enacted by Ga. L. 1984, p. 552, § 1; Ga. L. 2000, p. 1706, § 19.)

43-1-20.1. Cease and desist orders against persons practicing without a license; fine for violating order.

(a) Notwithstanding any other provisions of the law to the contrary, after notice and hearing, a professional licensing board may issue a cease and desist order prohibiting any person from violating the provisions of this title by engaging in the practice of a business or profession without a license.

(b) The violation of any cease and desist order of a professional licensing board issued under subsection (a) of this Code section shall subject the person violating the order to further proceedings before the board, and the board shall be authorized to impose a fine not to exceed \$500.00 for each transaction constituting a violation thereof. Each day that a person practices in violation of this title shall constitute a separate violation.

(c) Initial judicial review of the decision of the board entered pursuant to this Code section shall be available solely in the superior court of the county of domicile of the board.

(d) Nothing in this Code section shall be construed to prohibit a professional licensing board from seeking remedies otherwise available by statute without first seeking a cease and desist order in accordance with the provisions of this Code section. (Code 1981, § 43-1-20.1, enacted by Ga. L. 1986, p. 1155, § 1; Ga. L. 1990, p. 1965, § 3; Ga. L. 2000, p. 1706, § 19.)

Cross references. — Cease and desist order violations, § 43-14-12.1. administrative law, see 38 Mercer L. Rev. 17 (1986).

Law reviews. — For annual survey of

43-1-21. Release of information regarding investigations.

The division director is authorized to provide to any lawful licensing authority of this or any other state, upon inquiry by such authority, information regarding a past or pending investigation of or disciplinary sanction against any applicant for licensure by that board or licensee of that board notwithstanding the provisions of subsection (h) of Code Section 43-1-19 or any other law to the contrary regarding the confidentiality of that information. Nothing in this Code section or chapter shall be construed to prohibit or limit the authority of that director to disclose to any person or entity information concerning the existence of any investigation for unlicensed practice being conducted against any person who is neither licensed nor an applicant for licensure by a professional licensing board. (Code 1981, § 43-1-21, enacted by Ga. L. 1984, p. 552, § 1; Ga. L. 1997, p. 677, § 3; Ga. L. 2000, p. 1706, § 7.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, “professional licensing” was substituted for “state examining” in the last sentence.

43-1-22. Inactive status licenses.

The division director may provide for inactive status licenses for the various professional licensing boards. (Code 1981, § 43-1-22, enacted by Ga. L. 1984, p. 552, § 1; Ga. L. 2000, p. 1706, § 8.)

43-1-23. Exemption of licensees of professional licensing boards from filing with clerk of superior court.

No licensee of a professional licensing board shall be required to file or record his license with the clerk of the superior court, and no clerk shall be required to report the filing or recordation of any such license. (Code 1981, § 43-1-23, enacted by Ga. L. 1984, p. 552, § 1; Ga. L. 2000, p. 1706, § 19.)

43-1-24. Licensed professionals subject to regulation by professional licensing board.

Any person licensed by a professional licensing board and who practices a “profession,” as defined in Chapter 7 of Title 14, the “Georgia Professional Corporation Act,” or who renders “professional services,” as defined in Chapter 10 of Title 14, “The Georgia Professional Association Act,” whether such person is practicing or rendering services as a proprietorship, partnership, professional corporation, professional association, other corporation, limited liability company, or any other business entity, shall remain subject to regulation by that professional licensing board, and such practice or rendering of services in that business entity shall not change the law or existing standards applicable to the relationship between that person rendering a professional service and the person receiving such service, including but not limited to the rules of privileged communication and the contract, tort, and other legal liabilities and professional relationships between such persons. (Code 1981, § 43-1-24, enacted by Ga. L. 1984, p. 552, § 1; Ga. L. 1993, p. 123, § 5; Ga. L. 1999, p. 81, § 43; Ga. L. 2000, p. 1706, § 19.)

JUDICIAL DECISIONS

“Professional” defined for malpractice act. — Legislature intended for the term “professional” as used in O.C.G.A. § 9-11-9.1 to be defined by O.C.G.A. §§ 14-7-2(2), 14-10-2(2), and 43-1-24. *Gillis v. Goodgame*, 262 Ga. 117, 414 S.E.2d 197 (1992).

Affidavit requirements of O.C.G.A. § 9-11-9.1 apply only to those professions recognized under Georgia law in O.C.G.A. §§ 14-7-2(2), 14-10-2(2), and 43-1-24. *Gillis v. Goodgame*, 262 Ga. 117, 414 S.E.2d 197 (1992).

Affidavit requirement applies against a hospital not only when liability is based upon the doctrine of respondeat superior but when it is further grounded upon the averment of acts or omissions requiring the exercise of professional skill and judgment by agents or employees who themselves are recognized as “professionals” under O.C.G.A. §§ 14-7-2(2), 14-10-2(2), and 43-1-24. *Dozier v. Clayton County Hosp. Auth.*, 206 Ga. App. 62, 424 S.E.2d 632 (1992).

O.C.G.A. § 9-11-9.1 applies only to those licensed professions regulated by state examining boards when licensure is predicated upon successful completion of the specialized schooling or training necessary to obtain the expertise to practice that profession. *Harrell v. Lusk*, 263 Ga. 895, 439 S.E.2d 896 (1994).

Cited in *Carolina Cas. Ins. Co. v. R.L. Brown & Assocs.*, No. 1:04-cv-3537-GET, 2006 U.S. Dist. LEXIS 71056 (N.D. Ga. Sept. 29, 2006).

43-1-25. Authority of professional licensing boards to promulgate rules and regulations.

Except as provided in subsection (o) of Code Section 43-1-19, Code Sections 43-1-16 through 43-1-24 shall apply to all professional licensing boards and licenses thereunder, except the Georgia Real Estate Commission and its licensees, notwithstanding any other law to the contrary, and each such professional licensing board may promulgate

rules and regulations to implement the authority provided by the applicability of said provisions to said boards. (Code 1981, § 43-1-25, enacted by Ga. L. 1984, p. 552, § 1; Ga. L. 2000, p. 1706, § 19.)

43-1-26. Exemption of credentialed persons from licensure, registration, or certification in the state in connection with the Olympic and Paralympic Games; conditions and limitations; consent for certain medical services; automatic repeal.

Reserved. Repealed by Ga. L. 1994, p. 480, § 1, effective December 31, 1996.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, the designation of this Code section was reserved.

Editor's notes. — This Code section was based on Code 1981, § 43-1-26, enacted by Ga. L. 1994, p. 480, § 1.

43-1-27. Licensee required to notify licensing authority of felony conviction.

Any licensed individual who is convicted under the laws of this state, the United States, or any other state, territory, or country of a felony as defined in paragraph (3) of subsection (a) of Code Section 43-1-19 shall be required to notify the appropriate licensing authority of the conviction within ten days of the conviction. The failure of a licensed individual to notify the appropriate licensing authority of a conviction shall be considered grounds for revocation of his or her license, permit, registration, certification, or other authorization to conduct a licensed profession. (Code 1981, § 43-1-27, enacted by Ga. L. 1996, p. 776, § 3.)

43-1-28. Volunteers in health care specialties.

(a) This Code section shall be known and may be cited as the "Georgia Volunteers in Health Care Specialties Act."

(b) As used in this Code section, the term:

(1) "Health care board" means that professional licensing board which licenses a health care practitioner under this title.

(2) "Health care practitioner" means a chiropractor, registered professional nurse, podiatrist, optometrist, professional counselor, social worker, marriage and family therapist, occupational therapist, physical therapist, physician assistant, licensed practical nurse, certified nurse midwife, pharmacist, speech-language pathologist, audiologist, psychologist, or dietitian.

(3) "Health care specialty" means the practice of chiropractic, nursing, podiatry, optometry, professional counseling, social work,

marriage and family therapy, occupational therapy, physical therapy, physician assistance, midwifery, pharmacy, speech-language pathology, audiology, psychology, or dietetics.

(4) "Unrestricted" means that no restrictions have been placed on a health care practitioner's license by a health care board, no sanctions or disciplinary actions have been imposed by a health care board on a health care practitioner, and a health care practitioner is not under probation or suspension by a health care board.

(c) Notwithstanding any other provision of law, each health care board shall issue a special license to qualifying health care practitioners whose health care specialty is licensed by that board under the terms and conditions set forth in this Code section. The special license shall only be issued to a person who:

(1) Is currently licensed to practice the applicable health care specialty in any health care specialty licensing jurisdiction in the United States and whose license is unrestricted and in good standing; or

(2) Is retired from the practice of the health care specialty or, in the case of a physician assistant, has an inactive license and is not currently engaged in such practice either full time or part time and has, prior to retirement or attaining inactive status, maintained full licensure unrestricted in good standing in the applicable health care specialty licensing jurisdiction in the United States.

(d) The special licensee shall be permitted to practice the health care specialty only in the noncompensated employ of public agencies or institutions, not for profit agencies, not for profit institutions, nonprofit corporations, or not for profit associations which provide health care specialty services only to indigent patients in areas which are underserved by that specialty or critical need population areas of the state, as determined by the board which licenses that specialty, or pursuant to Article 8 of Chapter 8 of Title 31.

(e) The person applying for the special license under this Code section shall submit to the appropriate health care board a copy of his or her health care specialty degree, a copy of his or her health care specialty license in his or her current or previous licensing and regulating jurisdiction, and a notarized statement from the employing agency, institution, corporation, association, or health care program on a form prescribed by that board, whereby he or she agrees unequivocally not to receive compensation for any health care specialty services he or she may render while in possession of the special license.

(f) Examinations by the health care board, any application fees, and all licensure and renewal fees may be waived for the holder of the special license under this Code section.

(g) If, at the time application is made for the special license, the health care practitioner is not in compliance with the continuing education requirements established by the health care board for the applicable health care specialty, the health care practitioner shall be issued a nonrenewable temporary license to practice for six months provided the applicant is otherwise qualified for such license.

(h)(1) Except as provided for in paragraph (2) of this subsection, the liability of persons practicing a health care specialty under and in compliance with a special license issued under this Code section and the liability of their employers for such practice shall be governed by Code Section 51-1-29.1, except that a podiatrist engaged in such practice and an employer thereof shall have the same immunity from liability as provided other health care practitioners under Code Section 51-1-29.1.

(2) The liability of persons practicing a health care specialty pursuant to Article 8 of Chapter 8 of Title 31 under and in compliance with a special license issued under this Code section and the liability of their employers for such practice shall be governed by the provisions of such article.

(i) This Code section, being in derogation of the common law, shall be strictly construed. (Code 1981, § 43-1-28, enacted by Ga. L. 2000, p. 1406, § 1; Ga. L. 2002, p. 639, § 1; Ga. L. 2005, p. 1493, § 2/HB 166; Ga. L. 2008, p. 324, § 43/SB 455; Ga. L. 2008, p. 354, § 3/HB 1222; Ga. L. 2009, p. 859, § 3/HB 509.)

The 2009 amendment, effective July 1, 2009, substituted “physician assistant” for “physician’s assistant” in paragraphs (b)(2) and (c)(2).

Cross references. — “Health Share” volunteers in medicine, T. 31, C. 8, A. 8.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, “professional licensing” was substituted for “state examining” in paragraph (b)(1).

Pursuant to Code Section 28-9-5, in 2002, “Specialties” was substituted for “Specialities” in subsection (a).

Editor’s notes. — Ga. L. 2000, p. 1406, § 2, not codified by the General Assembly, provides that: “This Act shall be automatically repealed July 1, 2003, upon which date any special license issued pursuant to this Act shall also expire.”

Ga. L. 2002, p. 639, § 1(b)(1), not codified by the General Assembly, provides: “Section 2 of an Act amending Chapter 1 of Title 43 of the Official Code of Georgia Annotated, relating to general provisions

regarding professions and businesses, approved May 1, 2000 (Ga. L. 2000, p. 1406), which would have provided for a future repeal or ‘sunset’ of Code Section 43-1-28 of the Official Code of Georgia Annotated, the ‘Georgia Volunteers in Health Care Specialties Act,’ is hereby repealed.”

Ga. L. 2002, p. 639, § 1(c)(1), not codified by the General Assembly, provides: “The provisions of Code Section 43-1-28 of the Official Code of Georgia Annotated, the ‘Georgia Volunteers in Health Care Specialties Act,’ which were in effect and applicable on January 1, 2002, shall remain in effect and applicable until and unless changed by future Act of the General Assembly.”

Ga. L. 2005, p. 1493, § 7, provides that the 2005 amendment becomes effective only when funds are specifically appropriated for purposes of that Act in an appropriations Act making specific reference to that Act. Funds were appropriated at the 2005 session of the General Assembly.

43-1-29. Suspension of license for nonpayment of student loans; procedure; reinstatement.

A professional licensing board shall suspend the license of a person licensed by that board who has been certified by a federal agency and reported to the board for nonpayment or default or breach of a repayment or service obligation under any federal educational loan, loan repayment, or service conditional scholarship program. Prior to the suspension, the licensee shall be entitled to notice of the board's intended action and opportunity to appear before the board according to procedures set forth by the division director in rules and regulations. A suspension of a license under this Code section is not a contested case under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." A license suspended under this Code section shall not be reinstated or reissued until the person provides the licensing board a written release issued by the reporting agency stating that the person is making payments on the loan or satisfying the service requirements in accordance with an agreement approved by the reporting agency. If the person has continued to meet all other requirements for licensure during the period of suspension, reinstatement of the license shall be automatic upon receipt of the notice and payment of any reinstatement fee which the board may impose. (Code 1981, § 43-1-29, enacted by Ga. L. 2001, p. 1066, § 1.)

Cross references. — Georgia Higher Education Assistance Corporation, § 20-3-260 et seq.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, "Proce-

dures" was substituted for "Procedures" in the third sentence.

Law reviews. — For note on the 2001 enactment of this Code section, see 18 Georgia. St. U.L. Rev. 256 (2001).

43-1-30. Collection of work force and demographic data; procedure for collection and utilization.

Reserved. Repealed by Ga. L. 2002, p. 615, § 3, effective December 31, 2007.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, the designation of this Code section was reserved.

Editor's notes. — This Code section was based on Code 1981, § 43-1-30, enacted by Ga. L. 2002, p. 615, §/3.

43-1-31. Expiration of professional licenses of service members on active duty outside of state.

(a) As used in this Code section, the term "service member" means an active duty member of the regular or reserve component of the United States armed forces, the United States Coast Guard, the Georgia National Guard, or the Georgia Air National Guard on ordered federal duty for a period of 90 days or longer.

(b) Any service member whose license to practice a profession issued pursuant to any provision of this title expired while such service member was serving on active duty outside the state shall be permitted to practice such profession in accordance with such expired license and shall not be charged with a violation of this title related to practicing a profession with an expired license for a period of six months from the date of his or her discharge from active duty or reassignment to a location within the state. Any such service member shall be entitled to renew such expired license without penalty within six months after the date of his or her discharge from active duty or reassignment to a location within the state. The service member must present to the applicable professional licensing board either a copy of the official military orders or a written verification signed by the service member's commanding officer to waive any charges. (Code 1981, § 43-1-31, enacted by Ga. L. 2005, p. 213, § 6/SB 258.)

CHAPTER 1A

OCCUPATIONAL REGULATION LEGISLATION REVIEW

Sec.		Sec.	
43-1A-1.	Short title.	43-1A-7.	Required information for proposed regulation.
43-1A-2.	Legislative intent.	43-1A-8.	Preferred forms of regulation; role of General Assembly.
43-1A-3.	Definitions.	43-1A-9.	Chapter not to limit legislature's constitutional powers.
43-1A-4.	Occupational Regulation Review Council.		
43-1A-5.	Powers and duties of council.		
43-1A-6.	Review of proposed legislation.		

Law reviews. — For annual survey of administrative law, see 38 Mercer L. Rev. 17 (1986).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

43-1A-1. Short title.

This chapter shall be known and may be cited as the “Georgia Occupational Regulation Review Law.” (Code 1981, § 43-1A-1, enacted by Ga. L. 1986, p. 803, § 1; Ga. L. 2010, p. 376, § 1/SB 149.)

Editor’s notes. — Ga. L. 2010, p. 376, § 1, effective July 1, 2010, reenacted this Code section without change.

43-1A-2. Legislative intent.

The General Assembly finds that the need for and the effectiveness of establishing occupational licensure and certification in this state has not been systematically evaluated. It is the purpose of this chapter to ensure that no programs of licensure and certification shall hereafter be

imposed upon any profession or business unless required for the safety and well-being of the citizens of this state. It is the further purpose of this chapter to authorize the periodic review of existing regulatory entities to ensure that the authority of such regulatory entities is applicable and necessary with relation to the current professional and business conditions of this state. Any actions of the council pursuant to this chapter are solely recommendations and shall be nonbinding. (Code 1981, § 43-1A-2, enacted by Ga. L. 1986, p. 803, § 1; Ga. L. 2010, p. 376, § 1/SB 149.)

The 2010 amendment, effective July 1, 2010, substituted “this state” for “the state” at the end of the second sentence and added the last two sentences.

43-1A-3. Definitions.

As used in this chapter, the term:

(1) “Applicant group” means any business or professional group or organization, any individual, or any other interested party which proposes that any business or professional group not presently regulated be regulated by the state.

(2) “Certificate” or “certification” means a voluntary process by which a statutory regulatory entity grants recognition to an individual who has met certain prerequisite qualifications specified by that regulatory entity and who may assume or use “certified” in the title or designation to perform prescribed occupational tasks.

(3) “Council” means the Georgia Occupational Regulation Review Council.

(4) “Grandfather clause” means a provision in a regulatory statute applicable to individuals engaged in the regulated business or profession prior to the effective date of the regulatory statute which exempts the individuals from meeting prerequisite qualifications set forth in the regulatory statute to perform prescribed occupational tasks.

(5) “Legislative committee of reference” means the standing legislative committee designated by the Speaker of the House of Representatives or the President of the Senate to consider proposed legislation introduced in their respective houses of the General Assembly to regulate any business or occupation not previously regulated.

(6) “License,” “licensing,” or “licensure” means authorization to engage in a business or profession which would otherwise be unlawful in the state in the absence of authorization. A license is granted to those individuals who meet prerequisite qualifications to perform

prescribed business or professional tasks, who use a particular title, or who perform those tasks and use a particular title.

(7) “Regulate” or “regulation” means the process of licensure or certification as defined in this Code section.

(8) “Regulatory entity” means any state agency which regulates one or more professions, occupations, industries, businesses, or other endeavors in this state.

(9) “State agency” means each state board, bureau, commission, department, division, office, or other separate unit of state government created or established by law. (Code 1981, § 43-1A-3, enacted by Ga. L. 1986, p. 803, § 1; Ga. L. 1987, p. 3, § 43; Ga. L. 2010, p. 376, § 1/SB 149.)

Editor’s notes. — Ga. L. 2010, p. 376, § 1, effective July 1, 2010, reenacted this Code section without change.

43-1A-4. Occupational Regulation Review Council.

(a) There is created the Georgia Occupational Regulation Review Council.

(b) The council shall consist of ten members:

- (1) The Comptroller General or his or her designee;
- (2) The Secretary of State or his or her designee;
- (3) The commissioner of public health or his or her designee;
- (4) The director of the Office of Planning and Budget or his or her designee;
- (5) The commissioner of natural resources or his or her designee;
- (6) The state revenue commissioner or his or her designee;
- (7) The Commissioner of Agriculture or his or her designee;
- (8) The administrator of the “Fair Business Practices Act of 1975” or his or her designee;
- (9) The chairperson of the legislative committee of reference or that person’s designee from that committee, but only when legislation referred by such committee is being considered by the council; and
- (10) The chairperson of that standing committee of the General Assembly appointed by the presiding officer thereof pursuant to subsection (b) of Code Section 43-1A-5 or that chairperson’s designee from that committee, but only when legislation of which that presid-

ing officer was notified under subsection (b) of Code Section 43-1A-5 is being considered by the council.

(c) The director of the Office of Planning and Budget or his or her designee shall serve as chairperson of the council.

(d) Legislative members of the council appointed thereto pursuant to paragraphs (9) and (10) of subsection (b) of this Code section shall receive for their attendance of meetings of the council the same expense and mileage allowance authorized for legislative members of interim legislative committees. (Code 1981, § 43-1A-4, enacted by Ga. L. 1986, p. 803, § 1; Ga. L. 1987, p. 3, § 43; Ga. L. 2009, p. 453, § 1-6/HB 228; Ga. L. 2010, p. 376, § 1/SB 149; Ga. L. 2011, p. 705, § 6-5/HB 214.)

The 2009 amendment, effective July 1, 2009, substituted “commissioner of community health” for “commissioner of human resources” in paragraph (b)(3).

The 2010 amendment, effective July 1, 2010, inserted “or her” throughout subsections (b) and (c).

The 2011 amendment, effective July 1, 2011, substituted “commissioner of public health” for “commissioner of community health” in paragraph (b)(3).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, in subsection (b), changed the capitalization of “human resources” in paragraph (3) and “natural resources” in paragraph (5), deleted “the Department of” preceding “human resources” in paragraph (3) and preceding “natural resources” in paragraph (5), and substituted “state revenue commissioner” for “commissioner of the Department of Revenue” in paragraph (6).

Editor’s notes. — The Fair Business Practices Act of 1975, referred to in paragraph (b)(8) of this Code section, is codified at Code Section 10-1-390 et seq.

Editor’s notes. — The Fair Business Practices Act of 1975, referred to in paragraph (b)(8) of this Code section, is codified at Code Section 10-1-390 et seq.

43-1A-5. Powers and duties of council.

(a) It shall be the duty of the council to:

(1) Review all bills introduced in the General Assembly to license or certify a profession or business, which is not currently licensed or certified by the state, based on the criteria outlined in Code Section 43-1A-6; and

(2) Review each existing regulatory entity that is currently regulated pursuant to this title to determine the applicability and necessity of such regulatory entity’s authority with relation to the current professional and business conditions of this state. The council shall conduct such review a minimum of once every seven years. All council meetings relating to a review of an existing regulatory entity pursuant to this paragraph shall be conducted in accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.”

(b) The chairperson of the legislative committee of reference shall provide written notification to the council of any proposed legislation introduced in that house of the General Assembly of which that committee is a standing committee if that legislation provides for the licensure or certification of a business or profession not currently

licensed or certified by the state. That chairperson at the same time shall provide written notification of that legislation to the presiding officer of the house of the General Assembly in which that legislation was not introduced, and that presiding officer shall then appoint the chairperson of a standing committee of that house to serve as a member of the council for the purpose of considering that legislation, except that the chairperson so appointed may instead designate another member of that standing committee to serve as a member of the council for that purpose. Within a period of time not to exceed nine months from the date of such notification to the council, but in no event later than the convening date of the next succeeding regular session of the General Assembly, the council shall provide a formal report evaluating the need to regulate the business or profession based on the factors and information provided under Code Section 43-1A-7 to the chairperson of the legislative committee of reference, the committee chairperson appointed to the council pursuant to paragraph (10) of subsection (b) of Code Section 43-1A-4, the presiding officers of the House of Representatives and the Senate, and the legislative counsel. If, subsequent to a review pursuant to paragraph (2) of subsection (a) of this Code section, the council concludes changes are needed to the regulations of an existing regulatory entity, or that a regulatory entity's existence is no longer necessary or in the interests of the state, a formal report recommending such changes shall be completed and distributed in the same manner described previously herein. If the council determines a need for regulation, the report shall recommend an appropriate type of regulation and an appropriate state agency to oversee the regulation.

(c) The council shall work with the applicant group, the legislative committee of reference, and other interested parties in formulating its formal report.

(d) The head of a regulatory entity subject to review pursuant to paragraph (2) of subsection (a) of this Code section shall have the right to testify to the council to contribute its perspective and recommendations regarding potential changes to how such regulatory entity is regulated. (Code 1981, § 43-1A-5, enacted by Ga. L. 1986, p. 803, § 1; Ga. L. 2010, p. 376, § 1/SB 149.)

The 2010 amendment, effective July 1, 2010, in subsection (a), added a colon at the end of the introductory paragraph, added the paragraph (a)(1) designation, in paragraph (a)(1), substituted "Review" for "review" at the beginning and substituted "; and" for a period at the end, and added paragraph (a)(2); added the next-to-last

sentence in subsection (b); and added subsection (d).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, "Code Section 43-1A-4" was substituted for "Code Section 41-1A-4" in the third sentence of subsection (b).

43-1A-6. Review of proposed legislation.

All bills introduced in the General Assembly to newly regulate a profession or business and all reviews of existing regulatory entities pursuant to paragraph (2) of subsection (a) of Code Section 43-1A-5 shall be reviewed according to the following criteria. In evaluating how or whether a profession or business shall hereafter be regulated, the following factors shall be considered:

- (1) Whether the unregulated practice of the occupation may harm or endanger the health, safety, and welfare of citizens of this state and whether the potential for harm is recognizable and not remote;
- (2) Whether the practice of the occupation requires specialized skill or training and whether the public needs and will benefit by assurances of initial and continuing occupational ability;
- (3) Whether the citizens of this state are or may be effectively protected by other means;
- (4) Whether the overall cost effectiveness and economic impact would be positive for citizens of this state; and
- (5) Whether there are means other than state regulation to protect the interests of the state. (Code 1981, § 43-1A-6, enacted by Ga. L. 1986, p. 803, § 1; Ga. L. 2010, p. 376, § 1/SB 149.)

The 2010 amendment, effective July 1, 2010, substituted “and all reviews of existing regulatory entities pursuant to paragraph (2) of subsection (a) of Code Section 43-1A-5 shall” for “should” and inserted “how or” in the introductory paragraph; in paragraph (1), substituted “the occupation” for “an occupation” at the

beginning and substituted “this state” for “the state” in the middle; substituted “the occupation” for “an occupation” near the beginning of paragraph (2); deleted “and” at the end of paragraph (3); substituted “this state; and” for “the state.” at the end of paragraph (4); and added paragraph (5).

43-1A-7. Required information for proposed regulation.

Applicant groups and other interested parties shall explain in writing each of the following factors to the extent requested by the council and the legislative committee of reference:

- (1) A definition of the problem and why regulation is necessary:
 - (A) The nature of the potential harm to the public if the business or profession is not regulated, and the extent to which there is a threat to public health and safety; and
 - (B) The extent to which consumers need and will benefit from a method of regulation identifying competent individuals engaged in the business or profession;

(2) The efforts made to address the problem:

(A) Voluntary efforts, if any, by members of the business or profession to establish a code of ethics or help resolve disputes between the business or professional group and consumers; and

(B) Recourse to and the extent of use of applicable law and whether it could be strengthened to control the problem;

(3) The alternatives considered:

(A) Regulation of business or professional employers rather than employees;

(B) Regulation of the program or service rather than the individuals;

(C) Registration of all individuals;

(D) Certification of all individuals;

(E) Other alternatives;

(F) Why the use of the alternatives specified in this paragraph would not be adequate to protect the public interest; and

(G) Why licensure would serve to protect the public interest;

(4) The benefit to the public if regulation is granted:

(A) The extent to which the incidence of specific problems present in the unregulated business or profession can reasonably be expected to be reduced by regulation;

(B) Whether the public can identify qualified individuals;

(C) The extent to which the public can be confident that regulated individuals are competent:

(i) Whether the proposed regulatory entity would be a board composed of members of the profession and public members, or a state agency, or both and, if appropriate, their respective responsibilities in administering the system of certification or licensure, including the composition of the board; the powers and duties of the board or state agency regarding examinations, investigations, and the disciplining of certified or licensed individuals; the promulgation of rules and a code of ethics; and how fees would be levied and collected to cover the expenses of administering and operating the regulatory system;

(ii) If there is a grandfather clause, whether such individuals will be required to meet the prerequisite qualifications established by the regulatory entity at a later date;

(iii) The nature of the standards proposed for certification or licensure as compared with the standards of other jurisdictions;

(iv) Whether the regulatory entity would be authorized to enter into reciprocity agreements with other jurisdictions; and

(v) The nature and duration of any training and whether applicants will be required to pass an examination; and, if an examination is required, by whom it will be developed and how the cost of development will be met; and

(D) Assurance to the public that regulated individuals have maintained their competence:

(i) Whether the certification or license will carry an expiration date; and

(ii) Whether renewal will be based only upon payment of a fee or whether renewal will involve reexamination, satisfactory completion of continuing education, peer review, or other enforcement;

(5) The extent to which regulation might harm the public:

(A) The extent to which regulation might restrict entry into the business or profession and whether the proposed standards are more restrictive than necessary to ensure safe and effective performance; and

(B) Whether there are similar professions to that of the applicant group which should be included in, or portions of the applicant group which should be excluded from, the proposed legislation;

(6) A description of the group proposed for regulation, including a list of associations, organizations, and other groups representing the business or profession in this state, an estimate of the number of individuals in each group, and whether the groups represent different levels of business or professional activity;

(7) The expected cost of regulation:

(A) The impact regulation might have on the costs of service to the public;

(B) The impact regulation might have on various types of insurance; and

(C) The initial and long-term cost to the state and to the general public of implementing the proposed legislation; and

(8) Any additional information requested by the council or the legislative committee of reference. (Code 1981, § 43-1A-7, enacted by Ga. L. 1986, p. 803, § 1; Ga. L. 2010, p. 376, § 1/SB 149.)

The 2010 amendment, effective July 1, 2010, substituted “Applicant” for “After July 1, 1986, applicant” at the beginning of the introductory paragraph.

43-1A-8. Preferred forms of regulation; role of General Assembly.

(a) After evaluating the report of the council and any other desired information based on the criteria outlined in Code Section 43-1A-6 and considering governmental and societal costs and benefits, if the General Assembly finds that it is necessary to regulate a business or profession not previously regulated by law, the most appropriate alternative method of regulation should be implemented, consistent with the public interest and this Code section:

- (1) Where the consumer may have a substantial basis for relying on the services of a profession or business, a system of certification should be implemented;
- (2) Where apparent that adequate regulation cannot be achieved by means other than licensing, a system of licensing should be implemented; or
- (3) Where regulation as defined in this chapter is deemed too restrictive and unnecessary to protect the public health and welfare, a less restrictive means of ensuring public protection, including, but not limited to, stricter civil action or criminal penalties, inspection requirements, or a system of registration, may be considered.

(b) The General Assembly may, with regard to an existing regulatory entity, and after evaluating the report of the council or any desired information, including, but not limited to, the criteria outlined in Code Section 43-1A-6 and any governmental and societal costs and benefits:

- (1) Take no action if it has determined that such existing regulatory agency is efficiently regulated and that no action is necessary in the interests of the state;
- (2) Amend the enabling legislation of such existing regulatory entity if it has determined that making such amendments shall more efficiently regulate such regulatory entity in a manner that is in the best interests of the state; or
- (3) Repeal the enabling legislation of such existing regulatory entity if it has determined that the continuing regulation of such regulatory entity is no longer in the interests of the state. (Code 1981, § 43-1A-8, enacted by Ga. L. 1986, p. 803, § 1; Ga. L. 2010, p. 376, § 1/SB 149.)

The 2010 amendment, effective July 1, 2010, designated the previously existing provisions as subsection (a); substituted “including, but not limited to,” for “including but not limited to” in paragraph (a)(3); and added subsection (b).

43-1A-9. Chapter not to limit legislature's constitutional powers.

Nothing in this chapter shall be construed to limit the authority of the General Assembly to legislate as authorized by the Constitution. (Code 1981, § 43-1A-9, enacted by Ga. L. 1986, p. 803, § 1; Ga. L. 2010, p. 376, § 1/SB 149.)

Editor's notes. — Ga. L. 2010, p. 376, § 1, effective July 1, 2010, reenacted this Code section without change.

CHAPTER 1B

PATIENT SELF-REFERRAL

Sec.		Sec.	
43-1B-1.	Short title.		tions as to financing and referrals; requirements; regulation.
43-1B-2.	Legislative intent.		
43-1B-3.	Definitions.	43-1B-7.	Exception for physicians treating workers' compensation claimants [Repealed].
43-1B-4.	Prohibited actions; civil penalties; grounds for disciplinary action.	43-1B-8.	Exception for health care providers with interest in health service regulated by federal law.
43-1B-5.	Disclosure form required; contents; posting; application of Code section; violation.		
43-1B-6.	Entities excepted from prohibi-		

Cross references. — Patient self-referral in workers' compensation cases, § 34-9-25.

Editor's notes. — Ga. L. 1993, p. 521, § 2, not codified by the General Assembly, provides: "This Act shall become effective July 1, 1993, and shall apply to referrals for designated health services and other health care items or services made on or after July 1, 1993, provided that with

respect to an investment interest acquired by an investor before July 1, 1993, Code Section 43-1B-4 shall not apply to referrals for designated health services and other health care items or services occurring before July 1, 1996."

Law reviews. — For note on 1993 enactment of this chapter, see 10 Georgia St. U.L. Rev. 192 (1993).

43-1B-1. Short title.

This chapter shall be known and may be cited as the "Patient Self-referral Act of 1993." (Code 1981, § 43-1B-1, enacted by Ga. L. 1993, p. 521, § 1.)

43-1B-2. Legislative intent.

It is recognized by the General Assembly that the referral of a patient by a health care provider to a provider of designated health care services in which the health care provider has an investment interest represents a potential conflict of interest. The General Assembly finds that these referral practices may limit or eliminate competitive alternatives in the health care services market, may result in overutilization of health care services, may increase costs to the health care system, and may adversely affect the quality of health care. The General Assembly also recognizes, however, that it may be appropriate for health care providers to own entities providing health care services, and to refer patients to such entities, as long as certain safeguards are present in the arrangement. It is the intent of the General Assembly to provide guidance to health care providers regarding prohibited patient

referrals between health care providers and entities providing health care services and to protect the citizens of Georgia from unnecessary and costly health care expenditures. (Code 1981, § 43-1B-2, enacted by Ga. L. 1993, p. 521, § 1.)

43-1B-3. Definitions.

As used in this chapter, the term:

(1) "Board" means any professional licensing board which, under the laws of this state, licenses, registers, or in any other way regulates any health care provider to whom this chapter applies.

(2) "Designated health services" means clinical laboratory services, physical therapy services, rehabilitation services, diagnostic imaging services, pharmaceutical services, durable medical equipment, home infusion therapy services (including related pharmaceuticals and equipment), home health care services, and outpatient surgical services.

(3) "Entity" means any individual, partnership, firm, corporation, or other business entity.

(4) "Fair market value" means value in arm's length transactions consistent with the general market value and, with respect to rentals or leases, the value of rental property for general commercial purposes, not taking into account its intended use, and, in the case of a lease of space, not adjusted to reflect the additional value the prospective lessee or lessor would attribute to the proximity or convenience to the lessor where the lessor is a potential source of patient referrals to the lessee.

(5) "Group practice" means a group of two or more health care providers legally organized as a partnership, professional corporation, or similar association:

(A) In which each health care provider who is a member of the group provides substantially the full range of services which the health care provider routinely provides, including medical care, consultation, diagnosis, or treatment, through the joint use of shared office space, facilities, equipment, and personnel;

(B) For which substantially all of the services of the health care providers who are members of the group are provided through the group and are billed in the name of the group and amounts so received are treated as receipts of the group; and

(C) In which the overhead expenses of and the income from the practice are distributed in accordance with methods previously determined by members of the group.

(6) "Health care provider" means a physician, chiropractor, podiatrist, optometrist, pharmacist, or physical therapist who is licensed or otherwise regulated under this title.

(7) "Immediate family member" means a health care provider's spouse, child, child's spouse, grandchild, grandchild's spouse, parent, parent-in-law, or sibling.

(8) "Investment interest" means an equity or debt security issued by an entity, including, without limitation, shares of stock in a corporation, units or other interests in a partnership, bonds, debentures, notes, or other equity interests or debt instruments. The following investment interests shall be excepted from this definition:

(A) An investment interest in an entity that is a provider of a designated health service solely in a rural area;

(B) An investment interest in notes, bonds, debentures, or other debt instruments issued by an entity which provides designated health services, as an integral part of a plan by such entity to acquire such investor's equity investment interest in the entity, provided that the interest rate is consistent with fair market value, and that the maturity date of the notes, bonds, debentures, or other debt instruments issued by the entity to the investor is not later than July 1, 1996;

(C) An investment interest in real property resulting in a landlord-tenant relationship between the health care provider and the entity in which the equity interest is held, unless the rent is determined, in whole or in part, by the business volume or profitability of the tenant or exceeds fair market value;

(D) A financial relationship between a university, college, or other entity providing education and training in the health sciences, including its owned and affiliated hospitals, and any entity or entities through which its faculty and employees who are health care providers provide designated health services; or

(E) An investment interest in a publicly held corporation with total assets over \$50 million whose shares are traded on a national exchange or over-the-counter market if the investment interest is less than 1 percent of the corporation, there are no special stock classes for health care provider investors, and no income from the investment interest is tied to the volume of referrals.

(9) "Investor" means a health care provider or entity owning a legal or beneficial ownership or investment interest, directly or indirectly, including, without limitation, through an immediate family member, trust, or another entity related to the investor within the meaning of 42 C.F.R. subsection 413.17, in an entity.

(10) "Referral" means any referral of a patient for health care services, including, without limitation:

(A) The forwarding of a patient by a health care provider to another health care provider or to an entity which provides or supplies designated health services or any other health care item or service;

(B) The request or establishment of a plan of care by a health care provider which includes the provision of designated health services or other health care item or service; or

(C) The following orders, recommendations, or plans of care shall not constitute a referral by a health care provider:

(i) By a radiologist for diagnostic imaging services;

(ii) By a health care provider specializing in the provision of radiation therapy services for such services;

(iii) By a health care provider referring within the health care provider's group practice;

(iv) By a pathologist for diagnostic clinical laboratory tests and pathological examination services, if furnished by or under the supervision of such pathologist pursuant to a consultation requested by another health care provider;

(v) By a staff health care provider of a hospital referring a patient to the hospital at which the health care provider has current staff privileges;

(vi) By a health care provider for items or services provided by such health care provider or by a member of such health care provider's group practice to the patients of that health care provider or group practice or items or services provided or performed at the direction or under the supervision of such health care provider or group practice; or

(vii) By a health care provider when the patient is in need of emergency health care services where any delay in treatment could reasonably be expected to jeopardize the life or health of the person affected.

(11) "Rural area" means a county with a population density of no greater than 65 persons per square mile, as defined by the United States decennial census of 1990. (Code 1981, § 43-1B-3, enacted by Ga. L. 1993, p. 521, § 1; Ga. L. 1994, p. 97, § 43; Ga. L. 1994, p. 530, § 1; Ga. L. 2000, p. 1706, § 19.)

Editor's notes. — Ga. L. 1994, p. 530, provides an effective date of July 1, 1994, § 2, not codified by the General Assembly, and provides that with respect to an in-

vestment interest acquired by a health care provider before July 1, 1994, for durable medical equipment, home infusion therapy services (including related pharmaceuticals and equipment), or home health care services, Code Section 43-1B-4 shall not apply to such referrals occurring before January 1, 1995, and that the Act shall not be construed to affect the effec-

tive date for any designated health care services other than durable medical equipment, home infusion therapy services (including related pharmaceuticals and equipment), or home health care services.

Law reviews. — For note on the 1994 amendment of this Code section, see 11 Georgia St. U.L. Rev. 230 (1994).

43-1B-4. Prohibited actions; civil penalties; grounds for disciplinary action.

Except as provided in this chapter:

(1) A health care provider may not refer a patient for the provision of designated health services to an entity in which the health care provider has an investment interest. This prohibition includes any consideration paid as compensation or in any manner which is a product of, or incident to, or in any other way related to any membership, proprietary interest, or co-ownership with an individual, group, or organization to whom patients, clients, or customers are referred or to any employer-employee or independent contractor relationship including, without limitation, those that may occur in a limited partnership, profit-sharing arrangement, or other similar arrangement with any person licensed under this title to whom these patients are referred;

(2) A board shall encourage the use by licensees of the declaratory statement procedure to determine the applicability of this Code section or any rule adopted pursuant to this Code section as it applies solely to the licensee. The board shall determine the name of any entity in which a health care provider investment interest has been approved pursuant to this Code section and the board shall adopt rules providing for periodic quality assurance and utilization review of such entities;

(3) No claim for payment may be presented by a health care provider or an entity to any individual, third-party payor, or other entity for a service furnished pursuant to a referral prohibited under this Code section, and, further, a third-party payor may request annually and receive from the health care provider a copy of the disclosure form provided for in subsection (a) of Code Section 43-1B-5;

(4) If the health care provider or entity collects any amount that was billed in violation of this Code section, the health care provider or entity shall refund such amount on a timely basis to the payor or individual, whichever is applicable;

(5) Any person who presents or causes to be presented a bill or a claim for service that such person knows or should know is for a

service for which payment may not be made under paragraph (3) of this Code section and for which a refund has not been made under paragraph (4) of this Code section shall be subject to a civil penalty of not more than \$15,000.00 for each such service;

(6) Any health care provider or other entity that enters into an arrangement or scheme, such as a cross-referral arrangement, which the health care provider or entity knows or should know has a principal purpose of assuring referrals by the health care provider to a particular entity which, if the health care provider directly made referrals to such entity, would be in violation of this Code section shall be subject to a civil penalty of not more than \$50,000.00 for each such circumvention arrangement or scheme;

(7) Any health care provider or entity that divides fees or agrees to divide fees received for a designated health service with any health care provider or entity solely for referring a patient shall be subject to a civil penalty of not more than \$15,000.00 for each such service. The board shall develop rules regarding the prohibition of fee division and charging of fees solely for referral of a patient; and

(8) A violation of this Code section by a health care provider shall constitute grounds for disciplinary action to be taken by the health care provider's respective board, including the potential for license revocation. (Code 1981, § 43-1B-4, enacted by Ga. L. 1993, p. 521, § 1; Ga. L. 2011, p. 752, § 43/HB 142.)

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted "in this chapter:" for "in this Code section:" at the end of the introductory language.

Editor's notes. — Ga. L. 1993, p. 521, § 2, not codified by the General Assembly, effective July 1, 1993, provides that the Act "shall apply to referrals for designated

health services and other health care items or services made on or after July 1, 1993, provided that with respect to an investment interest acquired by an investor before July 1, 1993, Code Section 43-1B-4 shall not apply to referrals for designated health services and other health care items or services occurring before July 1, 1996."

43-1B-5. Disclosure form required; contents; posting; application of Code section; violation.

(a) A health care provider shall not refer a patient to an entity in which such health care provider has an investment interest unless, prior to the referral, the health care provider furnishes the patient with a written disclosure form approved by the health care provider's respective board, informing the patient of:

(1) The existence of the investment interest;

(2) The name and address of each applicable entity in which the referring health care provider is an investor; and

(3) The patient's right to obtain the items or services for which the patient has been referred at the location or from the health care provider or supplier of the patient's choice unless otherwise restricted by law, including the entity in which the referring health care provider is an investor.

(b) The health care provider shall post a copy of the disclosure form provided for in subsection (a) of this Code section in a conspicuous public place in the health care provider's office.

(c) The provisions of this Code section shall apply to all referrals made prior to July 1, 1996, and to referrals expressly exempted from the prohibitions contained in this chapter on and after that date. Nothing in this Code section shall be construed so as to authorize any referral otherwise prohibited by this chapter on and after July 1, 1996.

(d) A violation of this Code section shall be grounds for disciplinary action by the board. (Code 1981, § 43-1B-5, enacted by Ga. L. 1993, p. 521, § 1.)

43-1B-6. Entities excepted from prohibitions as to financing and referrals; requirements; regulation.

(a) The provisions of Code Section 43-1B-4 shall not prohibit nor apply to the referral of patients to any entity or facility providing designated health services if there is no entity or facility of reasonable quality, price, or service in the community, alternative financing is not reasonably available, and all the following requirements are met:

(1) No health care provider shall be required to make referrals or otherwise generate business as a condition for becoming or remaining an investor, and all other individuals are given a bona fide opportunity to invest in the facility on the same terms as a referring health care provider;

(2) The facility shall not loan funds nor guarantee loans for referring health care providers, nor shall the income from the investment be based on the volume of referrals made by the health care provider;

(3) The health care provider complies with Code Section 43-1B-5, requiring disclosure of the investment interest to the patient; and

(4) The facility shall provide uncompensated health services for indigent or charity patients at a standard which meets or exceeds 3 percent of the gross revenues of the facility after provisions for bad debts and third-party adjustments have been deducted. The services offered shall be reasonably financially accessible to the residents of the facility's service area.

(b) The provisions of this Code section shall be regulated by the state Department of Community Health. (Code 1981, § 43-1B-6, enacted by Ga. L. 1993, p. 521, § 1; Ga. L. 1999, p. 296, § 22.)

43-1B-7. Exception for physicians treating workers' compensation claimants.

Reserved. Repealed by Ga. L. 2006, p. 676, § 5/HB 1240, effective July 1, 2006.

Editor's notes. — This Code section was based on Code 1981, § 43-1B-7, enacted by Ga. L. 1993, p. 521, § 1.

43-1B-8. Exception for health care providers with interest in health service regulated by federal law.

Notwithstanding the provisions of this chapter, this chapter shall not apply to any health care provider or to any designated health service if the financial interest of such health care provider in such designated health service is restricted or regulated pursuant to any federal law which is applicable to such health care provider or designated health service and which covers private paying patients as well as medicare or Medicaid patients. (Code 1981, § 43-1B-8, enacted by Ga. L. 1993, p. 521, § 1.)

CHAPTER 2

AUDIT OF REGULATORY AGENCIES

Sec.	Sec.
43-2-1. Legislative findings; purpose of chapter.	43-2-4. Conduct of audit by state auditor; summary listing of findings; submission of copies; response.
43-2-2. "Regulatory agency" defined.	
43-2-3. Assignment of agencies to standing committees of Senate and House of Representatives; public hearings; factors considered in conducting audit.	43-2-5. Reports of findings and recommendations.

Editor's notes. — Ga. L. 1992, p. 3137, § 1, effective July 1, 1992, repealed the Code sections formerly codified at this chapter, and enacted the current chapter. The former chapter consisted of Code Sections 43-2-1 through 43-2-9 and was based on Ga. L. 1977, p. 961, §§ 1-6, 8-10; Ga. L.

1978, p. 2012, §§ 1-4; Ga. L. 1981, Ex. Sess., p. 8; Ga. L. 1982, p. 430, § 3; and Ga. L. 1984, p. 22, § 43.

Law reviews. — For note on 1992 enactment of this chapter, see 9 Georgia St. U.L. Rev. 319 (1992).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S.,

Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

43-2-1. Legislative findings; purpose of chapter.

The General Assembly finds that the effectiveness of many regulatory agencies which have been created in this state needs to be evaluated. It is the purpose of this chapter to establish a procedure for the review of regulatory agencies to increase their effectiveness and efficiency. (Code 1981, § 43-2-1, enacted by Ga. L. 1992, p. 3137, § 1.)

43-2-2. "Regulatory agency" defined.

As used in this chapter, the term "regulatory agency" means any board, bureau, or commission of the executive branch of state government in existence on July 1, 1992, or created by law after July 1, 1992, for the primary purpose of licensing or otherwise regulating or controlling any profession, business, or trade. (Code 1981, § 43-2-2, enacted by Ga. L. 1992, p. 3137, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Governor's declaration that board not terminated was possible circumvention of intent of General Assembly. — For Governor to declare that a regulatory agency may continue to do business as usual during the agency's ter-

mination period, or to declare that the board shall not be terminated, could be perceived as an attempt to circumvent the intent of the General Assembly. 1980 Op. Att'y Gen. No. 80-49.

43-2-3. Assignment of agencies to standing committees of Senate and House of Representatives; public hearings; factors considered in conducting audit.

(a) The President of the Senate and the Speaker of the House of Representatives shall assign each of the regulatory agencies to a standing committee of their respective houses for the purpose of review. When a performance audit is conducted, the Senate and House committees to which a regulatory agency is assigned shall conduct a joint public hearing or hearings for the purpose of receiving testimony from the public and from the officials of the regulatory agency involved relative to the effectiveness and efficiency of the agency.

(b) When conducting a performance audit, the state auditor shall take into consideration, among others, the following factors:

(1) Whether the absence of regulation would significantly harm, affect, or endanger the public health, safety, or welfare;

(2) Whether there is a less restrictive method of regulation available which would adequately protect the public;

(3) The extent to which the regulatory agency has permitted qualified applicants to serve the public;

(4) The extent to which affirmative action requirements of state and federal statutes and constitutions have been complied with by the regulatory agency or the profession, business, or trade it regulates;

(5) The extent to which the regulatory agency has operated in the public interest and the extent to which its operation has been

impeded or enhanced by existing statutes, procedures, practices, and rules and regulations, and any other circumstances, including budgetary, resource, and personnel matters;

(6) The extent to which the regulatory agency has recommended statutory changes to the General Assembly which would benefit the public as opposed to the persons it regulates;

(7) The extent to which the regulatory agency has required the persons it regulates to report to it concerning the impact of rules and decisions of the regulatory agency on the public regarding improved service, economy of service, and availability of service;

(8) The extent to which persons regulated by the regulatory agency have been required to assess problems in their profession, business, or trade which affect the public;

(9) The extent to which the regulatory agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by the persons it regulates;

(10) The efficiency with which formal public complaints filed with the regulatory agency concerning persons subject to regulation have been processed to completion by the regulatory agency; and

(11) The extent to which changes are necessary in the enabling laws of the regulatory agency to comply adequately with the factors listed in this subsection. (Code 1981, § 43-2-3, enacted by Ga. L. 1992, p. 3137, § 1.)

43-2-4. Conduct of audit by state auditor; summary listing of findings; submission of copies; response.

(a) The state auditor shall conduct a performance audit of any regulatory agency upon the request of a standing committee of the House or the Senate to which a regulatory agency is assigned. This audit shall include, without being limited to, a summary listing of the audit findings and a determination regarding each finding as to whether the regulatory agency, the division director, or both, or some other entity exercises major responsibilities in the area relating to the finding.

(b) A copy of each performance audit conducted pursuant to subsection (a) of this Code section shall be submitted, within 15 days after completion, to:

(1) Each member of the Senate and House standing committees to which the regulatory agency has been assigned for review under this chapter;

(2) The presiding officers of the Senate and House of Representatives;

(3) The Governor, the Attorney General, and the legislative counsel;

(4) The chairperson of the audited regulatory agency; and

(5) The division director.

(c) Within 30 days after submission of the performance audit, the regulatory agency and the division director shall each submit a written response as to each audit finding in those areas in which that agency or division director has been determined by the audit to exercise major responsibilities. Such response shall include, without being limited to, the following:

(1) Whether or not the agency or division director agrees with that finding and the reasons therefor;

(2) What steps have been or will be taken to address each issue raised in each finding, whether the steps are regulatory or proposed statutory changes, and the proposed effective date of any such regulatory changes; and

(3) If no steps have been or will be taken to address any issues raised in the finding, the reasons therefor.

(d) At the request of a standing committee assigned review, that response shall be updated and resubmitted by the division director and audited regulatory agency.

(e) Responses required by subsections (c) and (d) of this Code section shall be submitted to those persons designated in paragraphs (1), (2), and (3) of subsection (b) of this Code section to receive copies of performance audits. (Code 1981, § 43-2-4, enacted by Ga. L. 1992, p. 3137, § 1; Ga. L. 2000, p. 1706, § 19.)

43-2-5. Reports of findings and recommendations.

The Senate and House committees to which a regulatory agency has been assigned for review shall issue reports of their findings and recommendations to the Governor, to the regulatory agency involved, and to each member of the General Assembly. Such reports may be issued separately by the reviewing committees or jointly when a majority of the members of each reviewing committee are in agreement as to the recommendations and findings. Such reports shall contain copies of any legislation which must be enacted in order to fulfill the requirements of this chapter. (Code 1981, § 43-2-5, enacted by Ga. L. 1992, p. 3137, § 1.)

CHAPTER 3

ACCOUNTANTS

Sec.		Sec.	
43-3-1.	Short title.		accountant certificates [Repealed].
43-3-2.	Definitions.	43-3-18.	Reciprocity for registered public accountants [Repealed].
43-3-3.	Creation of board; members.	43-3-19.	Persons holding registered public accountant certificates as of July 1, 1977 [Repealed].
43-3-4.	Chairman and secretary of board; meetings; seal; records of proceedings.	43-3-20.	Registration as foreign accountant.
43-3-5.	Promulgation of rules and regulations; notice; hearings.	43-3-21.	Registration requirements for firms practicing public accountancy.
43-3-6.	Requirements for certificate of "certified public accountant"; disclosure of commissions from sale of insurance or financial products.	43-3-22.	Partnerships and professional associations composed of public accountants [Repealed].
43-3-7.	Examinations for certified public accountants; service of process for nonresident applicants.	43-3-23.	Renewal of registration.
43-3-8.	Oral examinations for certified public accountants; permanent record of examinations [Repealed].	43-3-23.1.	Redesignated.
43-3-9.	Certificate holder as "certified public accountant" or "public accountant"; list of certified public accountants; periodic registration.	43-3-23.2 and 43-3-23.3.	[Repealed].
43-3-10.	Temporary certified public accountant certificates [Repealed].	43-3-24.	(Effective until January 1, 2013. See note.) Issuance of permits to practice accountancy; substantial equivalency practice privilege for nonresidents.
43-3-11.	Reciprocity for certified public accountants.	43-3-24.	(Effective January 1, 2013. See note.) Issuance of permits to practice accountancy; substantial equivalency practice privilege for nonresidents.
43-3-12.	Persons holding certified public accountant certificates as of July 1, 1977.	43-3-25.	Continuing professional education requirements.
43-3-13.	Registered public accountants certified as certified public accountants.	43-3-26 and 43-3-27.	[Repealed].
43-3-14.	Examinations for registered public accountants [Repealed].	43-3-28.	Revocation, suspension, or refusal to renew certificate, registration, or permit; immunity.
43-3-15.	Oral examinations for registered public accountants; permanent record of examinations [Repealed].	43-3-29.	Revocation, suspension, or refusal to renew firm registration or permit.
43-3-16.	Certificate holder as "registered public accountant"; list of registered public accountants; periodic registration [Repealed].	43-3-29.1.	Sanctions.
43-3-17.	Temporary registered public	43-3-30.	Adjudicative hearings before board.
		43-3-31.	Reinstatement of certification or registration; modification of suspension of permit or practice privilege.
		43-3-32.	Ownership of accountants' working papers; confidentiality of communications to accountants.

Sec.		Sec.	
43-3-33.	Injunctions; assistance of Attorney General.		fraudulent claims; regulation of solicitation of employment.
43-3-34.	Holding oneself out to be a licensed certified public accountant or public accountant; single prohibited act as grounds for injunction or conviction.	43-3-36.	Exceptions to operation of chapter.
		43-3-36.1.	Exempted licensees.
43-3-35.	Use of titles or devices; false or	43-3-37.	Use of acquired materials in civil action.
		43-3-38.	Penalty.

Administrative rules and regulations. — Organization, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Accountancy, Chapter 20-1.

Code of Professional Conduct, Official Compilation of the Rules and Regulations

of the State of Georgia, State Board of Accountancy, Chapter 20-12.

Law reviews. — For article, "The Controversy Over Third Party Rights: Toward More Predictable Parameters of Auditor Liability," see 22 Ga. L. Rev. 149 (1987).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, Ch. 84-2 are included in the annotations for this chapter.

Intent of chapter. — Legislature in enacting this chapter sought to control the profession of public accounting, and to prohibit all persons who do not meet the requirements of the chapter from engaging therein. *Knight Drug Co. v. Naismith*, 73 Ga. App. 793, 38 S.E.2d 87 (1946) (decided under former Code 1933, Ch. 84-2).

Ways in which professions might be regulated by police power. — When purpose of statute is to regulate and control an occupation or profession under police power of legislature, such purpose may be manifested in various ways, such as by requiring all persons seeking license to practice such trade or profession to first take an examination by some prescribed authority as to that person's skill and knowledge of the occupation, or by requiring applicants seeking registration to first give bond and security to benefit any who might be injured by wrongful or unskillful practice, or by requiring proof of good character before being licensed and registered. *Knight Drug Co. v. Naismith*, 73 Ga. App. 793, 38 S.E.2d 87 (1946) (decided under former Code 1933, Ch. 84-2).

Chapter invalidates contracts by unlicensed practitioner. — This chapter was intended for the purpose of regulating profession of public accounting and it is a condition precedent to engaging in that profession that persons wishing to engage therein obtain license required or suffer peril of having all contracts declared void and unenforceable and further peril of being indicted for a crime. *Knight Drug Co. v. Naismith*, 73 Ga. App. 793, 38 S.E.2d 87 (1946) (decided under former Code 1933, Ch. 84-2).

Possession of license presumed. — In a civil action brought by one pursuing an occupation required by law to be licensed, to recover for value of services, general rule is that in absence of any statutory provision affecting the question, possession of license will be presumed. *Knight Drug Co. v. Naismith*, 73 Ga. App. 793, 38 S.E.2d 87 (1946) (decided under former Code 1933, Ch. 84-2).

Accountant's liability is limited to those persons that he or she expressly knows will be given the information he or she generates, or to those persons intended to receive the information. *Badische Corp. v. Caylor*, 630 F. Supp. 1196 (N.D. Ga. 1986).

Cited in *Mayor of Savannah v. Canady*, 255 Ga. 23, 334 S.E.2d 693 (1985).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, Ch. 84-2 are included in the annotations for this chapter.

Certified public accountant's signature to report when principals not certified is misdemeanor. — Signature of certified public accountant to report for

firm where principals are not certified, or where one is certified and another is not, constitutes a misdemeanor, and all members of firm and certified public accountant signing report of firm would be equally guilty under the law. 1950-51 Op. Att'y Gen. p. 137 (decided under former Code 1933, Ch. 84-2).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

Am. Jur. Proof of Facts. — Accountant's Liability to Client for Performance of Duties, 16 POF2d 641.

Am. Jur. Trials. — Accountant Malpractice: Work Papers, 26 Am. Jur. Trials 1.

Third-Party Accountant Liability — Prospective Financial Statements Used in Securities Offerings, 45 Am. Jur. Trials 113.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law,

§ 1063. 16C C.J.S., Constitutional Law, § 890 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

Liability of independent accountant to investors or shareholders, 54 ALR2d 324; 46 ALR3d 979; 92 ALR3d 396; 48 ALR5th 389.

Regulation of accountants, 70 ALR2d 433; 4 ALR4th 1201.

Application of statute of limitations to damage actions against public accountants for negligence in performance of professional services, 26 ALR3d 1438.

Application of statute of limitations to actions for breach of duty in performing services of public accountant, 7 ALR5th 852.

43-3-1. Short title.

This chapter may be cited as the "Public Accountancy Act of 1977." (Code 1933, § 84-201, enacted by Ga. L. 1977, p. 1063, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 1 Am. Jur. 2d, Accountants, § 1 et seq.

Am. Jur. Pleading and Practice Forms. — 1 Am. Jur. Pleading and Practice Forms, Accountants, § 3.

C.J.S. — 1 C.J.S., Accountants, § 1 et seq.

43-3-2. Definitions.

As used in this chapter, the term:

(1) "Attest" means providing the following financial statement services:

(A) Any audit or other engagement to be performed in accordance with the Statements on Auditing Standards (SAS);

(B) Any review of a financial statement to be performed in accordance with the Statements on Standards for Accounting and Review Services (SSARS); provided, however, that nothing in this definition shall alter the rights of unlicensed accountants contained in Code Section 43-3-36;

(C) Any examination of prospective financial information to be performed in accordance with the Statements on Standards for Attestation Engagements (SSAE); and

(D) Any engagement to be performed in accordance with the auditing standards of the Public Company Accounting Oversight Board.

The standards specified in this paragraph shall be adopted by reference by the board pursuant to rule making and shall be those developed for general application by recognized national accountancy organizations, such as the American Institute for Certified Public Accountants and the Public Company Accounting Oversight Board.

(2) "Board" means the State Board of Accountancy.

(3) "Compilation" means providing a service to be performed in accordance with the Statements on Standards for Accounting and Review Services that presents information in the form of financial statements that are the representation of management or owners without undertaking to express any assurance as to the statements.

(4) "CPA" means certified public accountant.

(5) "Firm" means any person, proprietorship, partnership, corporation, association, or any other legal entity which practices public accountancy.

(6) "Home office" means the location identified by the client as the address to which a service described in paragraph (4) of subsection (b) of Code Section 43-3-24 is directed.

(7) "Live permit" means a permit issued under Code Section 43-3-24 which is in full force and effect.

(8) "Practice of public accountancy" or "practicing public accountancy" means offering to perform or performing for a client one or

more types of services involving the use of accounting or auditing skills, one or more types of management advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters while holding oneself out in such manner as to state or imply that one is a licensee.

(9) "Principal place of business" means the office location designated by the licensee for purposes of substantial equivalency and reciprocity.

(10) "State" means the District of Columbia and any state other than this state and any territory or insular possession of the United States. (Code 1933, § 84-202, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1982, p. 3, § 43; Ga. L. 1993, p. 123, § 6; Ga. L. 2008, p. 1112, § 2/HB 1055.)

43-3-3. Creation of board; members.

(a) There is created the State Board of Accountancy.

(b) The board shall consist of seven members, to be appointed by the Governor with the approval of the Senate. Each member of the board shall be a resident of this state. Six members of the board shall be certified public accountants, all of whom shall hold a permit to practice public accounting issued under Code Section 43-3-24. One member shall be appointed from the public at large and shall be a person to whom neither this state nor any other state has ever issued a certificate, registration, license, or permit to engage in the practice of public accounting. The person serving on the board on June 30, 2005, as a registered public accountant member of the board shall serve the remainder of the term to which such person was appointed as one of the certified public accountant members of the board.

(c) Each member of the board in office on July 1, 1982, shall remain in office until the expiration of his term and the appointment and approval of his successor.

(d) Any appointment or reappointment of board members shall be for a period of four years. The remaining portion of any unexpired term shall be filled by appointment by the Governor with the approval of the Senate. Upon the expiration of his term of office, a member shall continue to serve until his successor shall have been appointed and shall have qualified.

(e) No member of the board shall serve as such for more than two terms, consecutive or otherwise; and, for purposes of calculating the number of terms served, the filling of an unexpired term or terms for a total of more than 30 calendar months shall be treated as the serving of a full term.

(f) Any member of the board may be removed by the Governor for misconduct, incompetence, or neglect of duty. The membership on the board of any member whose permit to practice has expired and has not been renewed, has become void, or has been revoked or suspended shall be automatically terminated simultaneously with any such expiration, voiding, revocation, or suspension.

(g) Each member of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2. (Ga. L. 1908, p. 86, § 2; Civil Code 1910, § 1998; Code 1933, § 84-203; Code 1933, § 84-201, enacted by Ga. L. 1935, p. 85, § 1; Ga. L. 1943, p. 363, § 1; Ga. L. 1958, p. 216, § 1; Code 1933, § 84-203, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1980, p. 65, § 1; Ga. L. 1983, p. 559, § 1; Ga. L. 2005, p. 1030, § 1/SB 55.)

RESEARCH REFERENCES

ALR. — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7. member of occupation or profession sitting in license revocation proceeding, 97 ALR2d 1210.

Disqualification, for bias or interest, of

43-3-4. Chairman and secretary of board; meetings; seal; records of proceedings.

(a) The board shall elect annually a chairman from its members.

(b) The division director shall serve as secretary of the board and perform for the board the duties required of him as provided in Chapter 1 of this title.

(c) Three days' notice of any meeting shall be given by the chairman or division director, provided that notice may be waived by instrument in writing executed before or after the meeting; provided, further, that attendance at a meeting of the board shall constitute a waiver of notice thereof. Board meetings may be conducted by conference telephone calls, and participation in such a conference call shall constitute attendance at the meeting so conducted. Any action that might have been taken at a meeting of the board may be taken by the unanimous written consent of all members of the board.

(d) The board shall have a seal which shall be judicially noticed.

(e) The board shall preserve all applications and keep records of all of its proceedings for six years. In any proceeding in court, civil or criminal, arising out of or founded upon this chapter, copies of the records of the board's proceedings signed by a member of the board and certified as correct under the seal of the board by the division director shall be admissible in evidence in any court of this state without further proof.

(f) The board may appoint such committees or persons, who need not be members of the board, to advise or assist it in administration, investigation, and enforcement of the provisions of this chapter as the board deems necessary and shall be authorized to compensate any such persons or members of committees who are not members of the board in such amounts as it shall determine to be reasonable. (Ga. L. 1908, p. 86, § 2; Civil Code 1910, § 1998; Code 1933, § 84-203; Code 1933, §§ 84-203, 84-204, enacted by Ga. L. 1935, p. 85, §§ 3, 4; Code 1933, § 84-203, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1988, p. 1616, § 1; Ga. L. 2000, p. 1706, § 19.)

Administrative rules and regulations. — Organization, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Accountancy, Chapter 20-1.

RESEARCH REFERENCES

ALR. — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.
 Disqualification, for bias or interest, of member of occupation or profession sitting in license revocation proceeding, 97 ALR2d 1210.

43-3-5. Promulgation of rules and regulations; notice; hearings.

(a) The board may promulgate and amend, from time to time, such rules and regulations, consistent with this chapter and Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” as it deems consistent with or required for the public welfare, for the administration of any provision of this chapter, or for the orderly conduct of the board’s affairs. Such rules and regulations may include, without limiting the generality of the foregoing:

- (1) Rules of procedure for governing the conduct of matters before the board;
- (2) Rules of professional conduct for establishing and maintaining high standards of competence and integrity in the practice of public accountancy;
- (3) Regulations governing educational requirements for certification as a certified public accountant and registration as a public accountant and prescribing further educational requirements (requirements of continuing professional education) to be met from time to time by persons so certified or registered, in order to maintain their professional knowledge and competence, as a condition to continuing in the practice of public accountancy;
- (4) Regulations governing individuals or firms engaged in this state in the practice of public accountancy;

(5) Regulations governing the registration of offices established or maintained for the practice of public accountancy in this state and the conditions upon which such registration shall be granted, including any requirements that the board may deem necessary to monitor the practice of such office to determine whether acceptable standards of competence and integrity in the practice of public accountancy are being maintained; and

(6) Any and all other rules and regulations which the board deems necessary or appropriate in exercising its functions under this chapter.

(b) Prior to the adoption, amendment, or repeal of any rule other than interpretive rules or general statements of policy, the board shall give notice of its intended action in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," provided that such comments shall be advisory only. In connection with any rule-making proceeding, formal or informal, the board shall have the power to conduct hearings as provided in, and in accordance with, Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Code 1933, § 84-202, enacted by Ga. L. 1935, p. 85, § 2; Code 1933, § 84-203, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1988, p. 1616, § 2; Ga. L. 1993, p. 123, § 7.)

Administrative rules and regulations. — Rules of the profession, Official Compilation of the Rules and Regulations

of the State of Georgia, Rules of State Board of Accountancy, Chapter 20-1 et seq.

RESEARCH REFERENCES

ALR. — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

Disqualification, for bias or interest, of

member of occupation or profession sitting in license revocation proceeding, 97 ALR2d 1210.

43-3-6. Requirements for certificate of "certified public accountant"; disclosure of commissions from sale of insurance or financial products.

(a) The certificate of "certified public accountant" shall be granted by the board to any person:

(1) Who has attained the age of 18;

(2) Who is, in the opinion of the board, of good moral character;

(3) Who meets the following requirements of education and experience:

(A)(i) Presentation to the board of such evidence as it may require that the applicant has received a baccalaureate degree or

completed the requirements therefor, conferred by a college or university accredited by a national or regional accrediting organization recognized by the board, with a concentration in accounting or what the board determines to be the substantial equivalent of an accounting concentration, or with a nonaccounting concentration supplemented by what the board determines to be the substantial equivalent of an accounting concentration, including related courses in other areas of business administration.

(ii) After January 1, 1998, any person who has not previously sat for the uniform written examination for the certificate of certified public accountant must have completed a total of 150 semester hours or 225 quarter hours of college education, including a baccalaureate degree awarded by a college or university accredited by either a national or regional accrediting organization recognized by the board. The total educational program shall include an undergraduate accounting concentration as defined by the board or what the board determines to be the substantial equivalent of an undergraduate accounting concentration; and

(B) One year of continuous experience in public accountancy immediately preceding the date of application for the certificate or within a reasonable time prior to the date of such application as provided by the board by rule, provided that the board may promulgate rules stating certain circumstances which shall constitute acceptable breaks in the continuity of said experience; and provided, further, that the board may accept, in lieu of such year of experience in public accounting, evidence satisfactory to it of one year of continuous employment in the accounting field in industry, business, government, or college teaching; any combination of the above; or any combination of the above and practice of public accountancy immediately preceding the date of application for the certificate or what the board determines to be the equivalent thereof; and provided, further, that any person certified as a certified public accountant under the laws of this state on July 1, 1977, shall be deemed to have the experience in the practice of public accountancy required by this subparagraph; and

(4) Who shall have passed an examination approved by the board in such related subjects as the board deems appropriate.

(b) For the purposes of this Code section, "good moral character" means fiscal integrity and a lack of any history of acts involving dishonesty or moral turpitude. For failure to satisfy this requirement, the board may refuse to certify an applicant where it finds that there is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a licensee and the

finding by the board of a lack of good moral character is supported by clear and convincing evidence. When an applicant is found to be unqualified for a certificate because of lack of good moral character, the board shall furnish the applicant a statement containing the findings of the board and a complete listing of the evidence upon which the determination was based, and the applicant may request a hearing on that determination.

(c) Any person who holds a certificate as a "certified public accountant" and who is engaged in the sale of insurance or financial products for which such person receives commissions must disclose in writing to the client the fact that the person shall receive commissions from the sale to the client of any such insurance or financial products; provided, however, that the person shall not be required to disclose the actual amount of such commissions. A person who violates this subsection shall be guilty of a misdemeanor. (Ga. L. 1908, p. 86, § 1; Civil Code 1910, § 1995; Code 1933, § 84-201; Code 1933, §§ 84-207, 84-208, enacted by Ga. L. 1935, p. 85, §§ 7, 8; Ga. L. 1943, p. 363, § 2; Ga. L. 1965, p. 185, § 1; Ga. L. 1972, p. 508, § 1; Code 1933, § 84-204, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1983, p. 559, § 2; Ga. L. 1991, p. 371, § 1; Ga. L. 2002, p. 863, § 1; Ga. L. 2008, p. 1112, § 3/HB 1055.)

Administrative rules and regulations. — Examinations, application for certificates, and temporary permits — certified public accountants, Official Compi-

lation of the Rules and Regulations of the State of Georgia, State Board of Accountancy, Chapter 20-3.

OPINIONS OF THE ATTORNEY GENERAL

CPA applying for license must meet present requirements. — An individual who first qualified as a certified public accountant several years ago, but failed to

apply for a license until now, must meet the present requirements for licensure. 1980 Op. Att'y Gen. No. 80-98.

43-3-7. Examinations for certified public accountants; service of process for nonresident applicants.

(a) The board may provide, by regulation, for the general scope of the examination described in paragraph (4) of subsection (a) of Code Section 43-3-6. The board may approve the examination and obtain advice and assistance in providing for and grading such examination and the division director, with approval of the board, may contract with third parties to perform administrative services with respect to the examination as he or she deems appropriate.

(b) As a prerequisite to sit for the examination, candidates shall meet the education requirements provided in division (a)(3)(A)(i) of Code Section 43-3-6.

(c) An applicant for the certificate of certified public accountant who has successfully completed the examination provided for in paragraph (4) of subsection (a) of Code Section 43-3-6 shall have no status as a certified public accountant until he or she has the requisite education and experience and has received his or her certificate as a certified public accountant.

(d) The board, by regulation, may provide for granting a credit to any applicant for satisfactory completion of an examination in any one or more of the subjects provided for in paragraph (4) of subsection (a) of Code Section 43-3-6 given by the licensing authority in another jurisdiction. Such regulations shall include such requirements as the board deems appropriate to ensure that any examination approved as a basis for any such credit, in the judgment of the board, shall be at least as thorough as the examination approved by the board at the time of the granting of such credit.

(e) The board, by regulation, may prescribe the time and conditions under which an applicant may retain credit for a portion or portions of the examination provided for in paragraph (4) of subsection (a) of Code Section 43-3-6.

(f) Application for certification by persons who are not residents of this state shall constitute the appointment of the Secretary of State as the agent for service of process in any action or proceeding against such applicant arising out of any transaction, activity, or operation connected with or incidental to the practice of public accounting in this state by nonresident holders of certified public accountant certificates. (Code 1933, § 84-205, enacted by Ga. L. 1935, p. 85, § 5; Code 1933, § 84-204, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1983, p. 559, § 3; Ga. L. 1989, p. 1098, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2002, p. 863, § 2.)

Administrative rules and regulations. — Examinations, application for certificates, and temporary permits — certified public accountants, Official Compi-

lation of the Rules and Regulations of the State of Georgia, State Board of Accountancy, Chapter 20-3.

43-3-8. Oral examinations for certified public accountants; permanent record of examinations.

Reserved. Repealed by Ga. L. 2002, p. 863, § 3, effective July 1, 2003.

Editor's notes. — This Code section was based on Code 1933, § 84-208, enacted by Ga. L. 1935, p. 85, § 8; Code 1933, § 84-204, enacted by Ga. L. 1977, p.

1063, § 1; Ga. L. 1983, p. 559, § 4; Ga. L. 1989, p. 1098, § 2; Ga. L. 1995, p. 1302, § 13.

43-3-9. Certificate holder as “certified public accountant” or “public accountant”; list of certified public accountants; periodic registration.

Any person who has received a certificate as a certified public accountant from the board and who holds a live permit may be styled and known as a “certified public accountant.” The division director shall maintain a list of certified public accountants; and, for this purpose, the board may provide by regulation a procedure whereby all certified public accountants are required to register with the board periodically. Any certified public accountant may also be known as a “public accountant.” (Code 1933, § 84-212, enacted by Ga. L. 1935, p. 85, § 12; Code 1933, § 84-204, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 2000, p. 1706, § 19.)

43-3-10. Temporary certified public accountant certificates.

Reserved. Repealed by Ga. L. 1989, p. 1098, § 3, effective July 1, 1989.

Editor’s notes. — This Code section acted by Ga. L. 1977, p. 1063, § 1; Ga. L. was based on Code 1933, § 84-204, enacted by Ga. L. 1983, p. 559, § 5.

43-3-11. Reciprocity for certified public accountants.

The board, in its discretion, may waive the examination provided for in paragraph (4) of subsection (a) of Code Section 43-3-6 and may issue a certificate as a certified public accountant to any person who possesses the qualifications specified in paragraphs (1) and (2) of subsection (a) of Code Section 43-3-6 and what the board determines to be the substantial equivalent of the qualifications under paragraph (3) of subsection (a) of Code Section 43-3-6 and who is a holder of a certificate as a certified public accountant, then in full force and effect, issued under the laws of another state, provided that the certificate held by such person was issued after an examination which, in the judgment of the board, is the equivalent of the standard established by the board for examinations administered pursuant to paragraph (4) of subsection (a) of Code Section 43-3-6; and provided, further, that such privileges are extended to citizens of this state by the state originally granting the certificate. Notwithstanding the foregoing, the examination provided for in paragraph (4) of subsection (a) of Code Section 43-3-6 shall be waived by the board in the case of an applicant who has been engaged in public practice for a period of ten years in another state pursuant to authority issued by such state. (Code 1933, § 84-209, enacted by Ga. L. 1935, p. 85, § 9; Code 1933, § 84-204, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1983, p. 559, § 6.)

Cross references. — Cooperation between Georgia and other states generally, T. 28, C. 6.

43-3-12. Persons holding certified public accountant certificates as of July 1, 1977.

Persons who hold certified public accountant certificates issued prior to July 1, 1977, under the laws of this state shall not be required to undergo recertification under this chapter but shall otherwise be subject to all applicable provisions of this chapter. Such certificates issued prior to July 1, 1977, shall be considered certificates issued under and subject to this chapter for all purposes. (Code 1933, § 84-204, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1982, p. 3, § 43.)

43-3-13. Registered public accountants certified as certified public accountants.

Notwithstanding any other provision of this chapter, on and after July 1, 2005, each registered public accountant who holds a live permit and who is in good standing shall be certificated as a certified public accountant. On and after July 1, 2005, the board shall not consider any application for a certificate of registered public accountant. (Code 1933, § 84-207, enacted by Ga. L. 1935, p. 85, § 7; Ga. L. 1943, p. 363, § 3; Ga. L. 1964, p. 723, § 3; Ga. L. 1965, p. 185, § 1; Ga. L. 1972, p. 508, § 1; Code 1933, § 84-205, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1983, p. 559, § 7; Ga. L. 2002, p. 863, § 4; Ga. L. 2005, p. 1030, § 2/SB 55.)

RESEARCH REFERENCES

ALR. — Liability of independent accountant to investors or shareholders, 54 ALR2d 324; 46 ALR3d 979; 92 ALR3d 396; 48 ALR5th 389.

Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

43-3-14. Examinations for registered public accountants.

Reserved. Repealed by Ga. L. 2005, p. 1030, § 3, effective July 1, 2005.

Editor's notes. — This Code section was based on Code 1933, § 84-205, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L.

1982, p. 3, § 43; Ga. L. 1983, p. 559, § 8; Ga. L. 1989, p. 1098, § 4; Ga. L. 2000, p. 1706, § 19; Ga. L. 2002, p. 863, § 5.

43-3-15. Oral examinations for registered public accountants; permanent record of examinations.

Reserved. Repealed by Ga. L. 2002, p. 863, § 6, effective July 1, 2003.

Editor's notes. — This Code section 1983, p. 559, § 9; Ga. L. 1989, p. 1098, was based on Code 1933, § 84-205, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. § 5; Ga. L. 1995, p. 1302, § 13.

43-3-16. Certificate holder as “registered public accountant”; list of registered public accountants; periodic registration.

Reserved. Repealed by Ga. L. 2005, p. 1030, § 4, effective July 1, 2005.

Editor's notes. — This Code section 1933, § 84-205, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 2000, p. 1706, § 19. was based on Code 1933, § 84-212, enacted by Ga. L. 1935, p. 85, § 12; Code

43-3-17. Temporary registered public accountant certificates.

Reserved. Repealed by Ga. L. 1989, p. 1098, § 6, effective July 1, 1989.

Editor's notes. — This Code section acted by Ga. L. 1977, p. 1063, § 1; Ga. L. was based on Code 1933, § 84-205, enacted by Ga. L. 1983, p. 559, § 10.

43-3-18. Reciprocity for registered public accountants.

Reserved. Repealed by Ga. L. 2005, p. 1030, § 5, effective July 1, 2005.

Editor's notes. — This Code section acted by Ga. L. 1977, p. 1063, § 1; Ga. L. was based on Code 1933, § 84-205, enacted by Ga. L. 1983, p. 559, § 11.

43-3-19. Persons holding registered public accountant certificates as of July 1, 1977.

Reserved. Repealed by Ga. L. 2005, p. 1030, § 6, effective July 1, 2005.

Editor's notes. — This Code section was based on Code 1933, § 84-205, enacted by Ga. L. 1977, p. 1063, § 1.

43-3-20. Registration as foreign accountant.

Any person who was registered with the board on or before July 1, 1989, as a foreign accountant based on being a holder in good standing of a certificate, license, or degree in a foreign country constituting a recognized qualification for the practice of public accountancy in such country shall be eligible to renew his live permit under such terms and conditions as provided by law and the rules and regulations of the board. Such registered foreign accountant shall be subject to the laws and rules and regulations of the board, including, but not limited to,

those concerning continuing professional education requirements and disciplinary actions. Should such registered foreign accountant fail to renew his live permit or have such permit revoked or suspended, the board may reinstate such registered foreign accountant under terms and conditions as determined by the board. (Code 1933, § 84-211, enacted by Ga. L. 1935, p. 85, § 11; Ga. L. 1958, p. 216, § 2; Ga. L. 1964, p. 723, § 2; Ga. L. 1968, p. 1232, § 1; Code 1933, § 84-206, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1989, p. 1098, § 7.)

43-3-21. Registration requirements for firms practicing public accountancy.

(a) The board shall grant or renew the registration of a firm practicing public accountancy to firms that meet the following requirements:

(1) Partners, members, or shareholders owning at least a simple majority of the financial interest and voting rights of the firm shall be certified public accountants of some state in good standing, except that such partners, members, or shareholders who are certified public accountants and whose principal place of business is in this state and who perform accounting services in this state must hold a live permit from this state. An individual who has practice privileges under subsection (b) of Code Section 43-3-24 who performs services for which a firm registration is required under paragraph (4) of subsection (b) of Code Section 43-3-24 shall not be required to obtain a certificate or live permit under this chapter;

(2) The firm shall be in compliance with all requirements and provisions of state law governing the organizational form of the firm in the state of the firm's principal place of business;

(3) The firm shall comply with all regulations pertaining to firms registered with the board;

(4) The resident manager of each office of the firm within this state in the practice of public accountancy shall be a certified public accountant of this state in good standing;

(5) Any firms that include nonlicensee owners shall comply with the following rules:

(A) The firm shall designate the holder of a live permit, or in the case of a firm which must register pursuant to subparagraph (b)(1)(C) of this Code section, a licensee of another state who meets the requirements set forth in subsection (b) of Code Section 43-3-24, who shall be responsible for the proper registration of the firm and shall identify that individual to the board;

(B) All nonlicensee owners shall be active individual participants in the firm or affiliated entities; and

(C) The firm shall comply with such other requirements as the board may impose by rule or regulation;

(6) Any holder of a live permit and any individual who qualifies for practice privileges under subsection (b) of Code Section 43-3-24 who is responsible for supervising attest or compilation services and signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm shall meet the competency requirements set out in the professional standards for such services; and

(7) Any holder of a live permit and any individual who qualifies for practice privileges under subsection (b) of Code Section 43-3-24 who signs or authorizes someone to sign the accountants' report on the financial statements on behalf of the firm shall meet the competency requirements of subparagraph (6) of this subsection.

(b)(1) The following firms must register under this Code section:

(A) Any firm with an office in this state practicing public accountancy;

(B) Any firm with an office in this state that uses the title "CPA" or "CPA firm"; and

(C) Any firm that does not have an office in this state but performs any service described in subparagraph (A), (C), or (D) of paragraph (1) of Code Section 43-3-2 for a client having its home office in this state.

(2) A firm that does not have an office in this state may perform services described in subparagraph (B) of paragraph (1) or paragraph (3) of Code Section 43-3-2 for a client having its home office in this state, may practice public accountancy as authorized under this Code section, and may use the title "CPA" or "CPA firm" without registering as provided in this Code section only if:

(A) It meets the qualifications described in paragraph (1) of subsection (a) of this Code section and it complies with the board's rules and regulations regarding peer review; and

(B) It performs such services through an individual with practice privileges under subsection (b) of Code Section 43-3-24.

(3) A firm that does not have an office in this state and that is not subject to the requirements of subparagraph (C) of paragraph (1) of this subsection or paragraph (2) of this subsection may perform other professional services included in the practice of public accountancy while using the title "CPA" or "CPA firm" in this state without registering under this Code section only if:

(A) It performs such services through an individual with practice privileges under subsection (b) of Code Section 43-3-24; and

(B) It can lawfully perform such services in the state where said individuals with practice privileges have their principal place of business.

(c) Each firm required to register under paragraph (1) of subsection (b) of this Code section shall be registered biennially under this chapter with the board, provided that any firm for which such requirement becomes effective between biennial reporting periods shall register with the board within 60 days. Such a firm must show that all attest and compilation services rendered in this state are under the supervision of a person holding a live permit issued by this state or a person with practice privileges under subsection (b) of Code Section 43-3-24. The board, by regulation, shall prescribe the procedure to be followed in effecting such registration and the information which must be provided regarding the firm and its practice.

(d) A registered firm shall file written notice to the board, within 60 days after the occurrence of the opening of a new office or the closing or change of address of any of its offices in this state. Each such office shall be under the supervision of a resident manager who may be a partner, principal, shareholder, member, or a staff employee holding a live permit.

(e) Neither the denial of a firm registration under this Code section nor the denial of the renewal of a firm registration under Code Section 43-3-23 shall be considered to be a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Notice and hearing within the meaning of said Chapter 13 of Title 50 shall not be required, but the applicant shall be allowed to appear before the board if he or she requests. (Code 1933, § 84-207, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1993, p. 123, § 8; Ga. L. 1997, p. 1545, § 1; Ga. L. 2005, p. 1030, § 7/SB 55; Ga. L. 2008, p. 1112, § 4/HB 1055.)

Administrative rules and regulations. — Corporations for the practice of public accounting, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Accountancy, Chapter 20-6.

Individuals, partnerships, associations and corporations composed of certified public accountants, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Accountancy, Chapter 20-7.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, Ch. 84-2 are included in the annotations for this Code section.

State Board of Accountancy cannot prescribe place of office of accountant who has been certified. 1954-56 Op. Att'y Gen. p. 532 (decided under former Code 1933, Ch. 84-2).

RESEARCH REFERENCES

ALR. — Right of corporation to engage in business, trade, or activity requiring license from public, 165 ALR 1098.

43-3-22. Partnerships and professional associations composed of public accountants.

Reserved. Repealed by Ga. L. 1993, p. 123, § 9, effective March 1, 1994.

Editor's notes. — This Code section 1983, p. 559, § 12; Ga. L. 1993, p. 123, was based on Code 1933, § 84-210, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. § 11.

43-3-23. Renewal of registration.

(a) In each renewal year, each firm registered in the state pursuant to Code Section 43-3-21 which has issued an audit, review, or compilation report within the 24 months preceding the date of expiration of the firm's registration must submit, with the application for renewal, evidence of satisfactory completion of a board approved peer review program within the 36 months preceding the date of such firm's registration expiration. Satisfactory completion shall mean that the firm has undergone the entire peer review process and that the report of the peer review indicates that the firm maintains acceptable standards of competence and integrity in the practice of public accountancy. Firms which have not issued an audit, review, or compilation report within the 24 months preceding the date of the firm's registration expiration must submit written confirmation of such fact with the application for the firm's registration renewal. The board may waive or modify the requirements of this subsection in cases of hardship or other such circumstances which the board deems appropriate. The provisions of this subsection shall not apply to the practice of an enrolled agent before the federal Internal Revenue Service or the Department of Revenue if the enrolled agent is not otherwise engaged in the practice of public accounting in this state.

(b) No firm shall be registered in the state which shall have failed to comply with the provisions of this Code section and all applicable requirements of law and rules promulgated by the board.

(c) This Code section shall be construed to apply only to firms required to be registered under this chapter. Nothing contained in this Code section shall prohibit any person from operating under the provisions of subsection (b) of Code Section 43-3-36. (Code 1981, § 43-3-23.1, enacted by Ga. L. 1988, p. 1616, § 3; Code 1981, § 43-3-23, as redesignated by Ga. L. 1997, p. 1545, § 3.)

Editor's notes. — Former Code Section 43-3-23.1, relating to renewal of registration, was redesignated as Code Section 43-3-23 by Ga. L. 1997, p. 1545, § 3, effective July 1, 1998.

Former Code Section 43-3-23, based on

Code 1933, § 84-209, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1993, p. 123, § 10, relating to registration of certified public accountant offices and resident managers, was repealed by Ga. L. 1997, p. 1545, § 2, effective July 1, 1998.

43-3-23.1. Redesignated.

Redesignated as Code Section 43-3-23, by Ga. L. 1997, p. 1545, § 3, effective July 1, 1998.

Editor's notes. — Ga. L. 1997, p. 1545, § 3, redesignated this Code section as

Code Section 43-3-23, effective July 1, 1998.

43-3-23.2 and 43-3-23.3.

Repealed by Ga. L. 1997, p. 1545, § 4, effective July 1, 1998.

Editor's notes. — Code Section 43-3-23.2 was based on Code 1981, § 43-3-23.2, enacted by Ga. L. 1988, p.

1616, § 3. Code Section 43-3-23.3 was based on Code 1981, § 43-3-23.3, enacted by Ga. L. 1988, p. 1616, § 3.

43-3-24. (Effective until January 1, 2013. See note.) Issuance of permits to practice accountancy; substantial equivalency practice privilege for nonresidents.

(a) A permit to engage in the practice of public accountancy in this state shall be issued by the division director, at the direction of the board, to each person who is certificated as a certified public accountant under Code Sections 43-3-6 through 43-3-12 or registered as a foreign accountant under Code Section 43-3-20 who shall have furnished evidence, satisfactory to the board, of compliance with the requirements of Code Section 43-3-25, and to individuals and firms registered under Code Section 43-3-21, provided that such entities are maintained and registered as required under Code Sections 43-3-21 and 43-3-23. There shall be a biennial permit fee in an amount to be determined by the board.

(b) Individuals may practice based on a substantial equivalency practice privilege as follows:

(1) An individual whose principal place of business is outside this state shall be presumed to have qualifications substantially equivalent to this state's requirements, shall have all the privileges of live permit holders of this state, and may practice public accountancy in this state without the requirement to obtain a live permit, certificate, or registration under this chapter or to otherwise notify or register with the board or pay any fee if the individual:

(A) Holds a valid license as a certified public accountant from any state which requires, as a condition of licensure, that an individual:

(i) Has at least 150 semester hours of college education including a baccalaureate or higher degree conferred by a college or university;

(ii) Achieves a passing grade on the Uniform Certified Public Accountant Examination; and

(iii) Possesses at least one year of experience, including providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills, which may be obtained through government, industry, academic, or public practice all of which was verified by a licensee; or

(B) Holds a valid license as a certified public accountant from any state which does not meet the requirements of subparagraph (A) of this paragraph but such individual's certified public accountant qualifications are substantially equivalent to those requirements. Any individual who passed the Uniform Certified Public Accountant Examination and holds a valid license issued by any other state prior to January 1, 2012, may be exempt from the education requirement in division (1)(A)(i) of this subsection for purposes of this subparagraph;

(2) Notwithstanding any other provision of law, an individual who offers or renders professional services, whether in person or by mail, telephone, or electronic means, under this Code section shall be granted practice privileges in this state and no notice, fee, or other submission shall be provided by any such individual. Such an individual shall be subject to the requirements of paragraph (3) of this subsection;

(3) An individual licensee of another state exercising the privilege afforded under this subsection, and the firm that employs that individual, shall simultaneously consent, as a condition of exercising this privilege:

(A) To the personal and subject matter jurisdiction and disciplinary authority of the board;

(B) To comply with the provisions of this chapter and the board's rules and regulations;

(C) That in the event the license from the state of the individual's principal place of business is no longer valid, the individual shall cease offering or rendering professional services in this state individually and on behalf of a firm; and

(D) To the appointment of the state board that issued the individual's license as the individual's agent upon whom process may be served in any action or proceeding by this state's board against the individual;

(4) An individual who qualifies for the practice privilege under this Code section who, for any entity with its home office in this state, performs any service under subparagraph (A), (C), or (D) of paragraph (1) of Code Section 43-3-2 may do so only through a firm that has registered with the board under Code Section 43-3-21; and

(5) An individual qualifying for the practice privilege under paragraph (1) of this subsection may provide expert witness services in this state and shall be deemed to be in compliance with paragraph (1) of subsection (c) of Code Section 24-9-67.1 for purposes of such services.

(c) Subsection (b) of this Code section shall not be applied or construed to permit an individual to engage in the practice of public accountancy in this state based on a substantial equivalency privilege unless such individual holds a valid license as a certified public accountant in a state which grants similar reciprocity to license holders in this state. (Code 1933, § 84-210, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1983, p. 559, § 12; Ga. L. 1993, p. 123, § 11; Ga. L. 1994, p. 97, § 43; Ga. L. 1997, p. 1545, § 5; Ga. L. 2000, p. 1706, § 19; Ga. L. 2005, p. 1030, § 8/SB 55; Ga. L. 2008, p. 1112, § 5/HB 1055.)

Editor's notes. — Code Section 43-3-24 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

Administrative rules and regulations. — Examinations, application for certificates, and temporary permits — certified public accountants, Official Compi-

lation of the Rules and Regulations of the State of Georgia, State Board of Accountancy, Chapter 20-3.

Law reviews. — For article on the effect on receiving government-issued licenses after a conviction based on a nolo contendere plea, see 13 Ga. L. Rev. 723 (1979).

43-3-24. (Effective January 1, 2013. See note.) Issuance of permits to practice accountancy; substantial equivalency practice privilege for nonresidents.

(a) A permit to engage in the practice of public accountancy in this state shall be issued by the division director, at the direction of the board, to each person who is certificated as a certified public accountant under Code Sections 43-3-6 through 43-3-12 or registered as a foreign accountant under Code Section 43-3-20 who shall have furnished evidence, satisfactory to the board, of compliance with the requirements of Code Section 43-3-25, and to individuals and firms registered under Code Section 43-3-21, provided that such entities are maintained and registered as required under Code Sections 43-3-21 and 43-3-23. There

shall be a biennial permit fee in an amount to be determined by the board.

(b) Individuals may practice based on a substantial equivalency practice privilege as follows:

(1) An individual whose principal place of business is outside this state shall be presumed to have qualifications substantially equivalent to this state's requirements, shall have all the privileges of live permit holders of this state, and may practice public accountancy in this state without the requirement to obtain a live permit, certificate, or registration under this chapter or to otherwise notify or register with the board or pay any fee if the individual:

(A) Holds a valid license as a certified public accountant from any state which requires, as a condition of licensure, that an individual:

(i) Has at least 150 semester hours of college education including a baccalaureate or higher degree conferred by a college or university;

(ii) Achieves a passing grade on the Uniform Certified Public Accountant Examination; and

(iii) Possesses at least one year of experience, including providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills, which may be obtained through government, industry, academic, or public practice all of which was verified by a licensee; or

(B) Holds a valid license as a certified public accountant from any state which does not meet the requirements of subparagraph (A) of this paragraph but such individual's certified public accountant qualifications are substantially equivalent to those requirements. Any individual who passed the Uniform Certified Public Accountant Examination and holds a valid license issued by any other state prior to January 1, 2012, may be exempt from the education requirement in division (1)(A)(i) of this subsection for purposes of this subparagraph;

(2) Notwithstanding any other provision of law, an individual who offers or renders professional services, whether in person or by mail, telephone, or electronic means, under this Code section shall be granted practice privileges in this state and no notice, fee, or other submission shall be provided by any such individual. Such an individual shall be subject to the requirements of paragraph (3) of this subsection;

(3) An individual licensee of another state exercising the privilege afforded under this subsection, and the firm that employs that individual, shall simultaneously consent, as a condition of exercising this privilege:

(A) To the personal and subject matter jurisdiction and disciplinary authority of the board;

(B) To comply with the provisions of this chapter and the board's rules and regulations;

(C) That in the event the license from the state of the individual's principal place of business is no longer valid, the individual shall cease offering or rendering professional services in this state individually and on behalf of a firm; and

(D) To the appointment of the state board that issued the individual's license as the individual's agent upon whom process may be served in any action or proceeding by this state's board against the individual;

(4) An individual who qualifies for the practice privilege under this Code section who, for any entity with its home office in this state, performs any service under subparagraph (A), (C), or (D) of paragraph (1) of Code Section 43-3-2 may do so only through a firm that has registered with the board under Code Section 43-3-21; and

(5) An individual qualifying for the practice privilege under paragraph (1) of this subsection may provide expert witness services in this state and shall be deemed to be in compliance with Code Section 24-7-702 for purposes of such services.

(c) Subsection (b) of this Code section shall not be applied or construed to permit an individual to engage in the practice of public accountancy in this state based on a substantial equivalency privilege unless such individual holds a valid license as a certified public accountant in a state which grants similar reciprocity to license holders in this state. (Code 1933, § 84-210, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1983, p. 559, § 12; Ga. L. 1993, p. 123, § 11; Ga. L. 1994, p. 97, § 43; Ga. L. 1997, p. 1545, § 5; Ga. L. 2000, p. 1706, § 19; Ga. L. 2005, p. 1030, § 8/SB 55; Ga. L. 2008, p. 1112, § 5/HB 1055; Ga. L. 2011, p. 99, § 64/HB 24.)

The 2011 amendment, effective January 1, 2013, substituted "Code Section 24-7-702" for "paragraph (1) of subsection (c) of Code Section 24-9-67.1" near the end of paragraph (b)(5). See editor's note for applicability.

Editor's notes. — Code Section 43-3-24 is set out twice in this Code. The

first version is effective until January 1, 2013, and the second version becomes effective on that date.

Ga. L. 2011, p. 99, § 101, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

43-3-25. Continuing professional education requirements.

(a) Every application for renewal of a live permit by any individual who is and has been certificated as a certified public accountant or registered as a foreign accountant by this state for one year or more shall be accompanied or supported by such evidence as the board shall prescribe of satisfactory completion of continuing professional education as provided in this Code section, provided that the board may relax or suspend requirements of continuing professional education in instances where an applicant's health requires it or in instances of individual hardship.

(b) The board shall be authorized to promulgate rules and regulations providing for the number of hours of acceptable continuing professional education, which shall not be less than 60 hours, required to renew a live permit, for the assignment of credit for hours in excess of the minimum requirement, and for the proration of required hours. The board may establish criteria for continuing professional education programs, provide for accreditation of such programs, enter into agreements with sponsors of such programs, and provide for the assignment of credits for participation in such programs.

(c) All provisions of this chapter relating to continuing professional education shall be administered by the board; and, in addition to the other powers conferred on the board by this chapter, the board shall have the authority to appoint a committee or committees composed of certified public accountants, as it deems appropriate, to administer, implement, and otherwise carry out the provisions of this chapter relating to continuing professional education. (Code 1933, § 84-210, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1989, p. 1098, § 8; Ga. L. 2005, p. 1030, § 9/SB 55.)

Administrative rules and regulations. — Continuing professional education, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Accountancy, Chapter 20-11.

Law reviews. — For article on the effect on receiving government-issued licenses after a conviction based on a nolo contendere plea, see 13 Ga. L. Rev. 723 (1979).

43-3-26 and 43-3-27.

Reserved. Repealed by Ga. L. 1983, p. 559, §§ 13 and 14, effective March 15, 1983.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, the designations of these Code sections were reserved.

Editor's notes. — Code Sections 43-3-26 and 43-3-27 were based on Ga. L. 1980, p. 1543, § 1.

43-3-28. Revocation, suspension, or refusal to renew certificate, registration, or permit; immunity.

(a) After notice and hearing as provided in Code Section 43-3-30, the board may revoke or suspend any certification issued under Code Sections 43-3-6 through 43-3-12 or a registration issued under Code Section 43-3-20 or may revoke, suspend, or refuse to renew any live permit or may censure the holder of any such permit, or may forbid an individual from exercising the substantial equivalency practice privilege, for any cause which the board may deem sufficient, including, without limiting the generality of the foregoing, any one or any combination of the following causes:

(1) Violation of any rule, regulation, or order promulgated by the board in accordance with this chapter;

(2) Fraud or deceit in obtaining certification as a certified public accountant or registration as a public accountant, in obtaining registration under this chapter, or in obtaining a live permit;

(3) Violation of any of the provisions of Code Section 43-3-35 or any other Code section of this chapter;

(4) Dishonesty, fraud, or gross negligence in the practice of public accountancy;

(5) Commission of a felony under the laws of any state or of the United States;

(6) Commission of any crime, an element of which is dishonesty or fraud, under the laws of any state or of the United States;

(7) Cancellation, revocation, suspension, or refusal to renew authority to practice as a certified public accountant or as a public accountant by any other state for any cause other than voluntary withdrawal or failure to pay an annual registration fee in such other state;

(8) Suspension or revocation of the right to practice before any state or federal agency;

(9) Failure to furnish evidence of satisfaction of requirements of continuing professional education as required by the board pursuant to Code Section 43-3-25 or to meet any conditions with respect to continuing professional education which the board may have ordered under that Code section;

(10) Conduct which discredits the accounting profession; or

(11) Failure of such holder's firm to register or renew its registration under Code Sections 43-3-21 and 43-3-23 or the failure of such firm to comply with any of the provisions of Code Section 43-3-23.

(b) A person, firm, corporation, association, authority, or other entity shall be immune from civil and criminal liability for reporting or investigating the acts or omissions of a licensee or applicant which violate the provisions of subsection (a) of this Code section or any other provision of law relating to a licensee's or applicant's fitness to practice public accounting or for initiating or conducting proceedings against such licensee or applicant, if such report is made or action is taken in good faith, without fraud or malice. Any person who testifies or who makes a recommendation to the board in the nature of peer review, in good faith, without fraud, or malice, before the board in any proceeding involving the provisions of subsection (a) of this Code section or any other law relating to a licensee's or applicant's fitness to practice public accounting shall be immune from civil and criminal liability for so testifying. (Code 1933, § 84-210, enacted by Ga. L. 1935, p. 85, § 10; Ga. L. 1950, p. 163, § 1; Code 1933, § 84-211, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1988, p. 1616, § 4; Ga. L. 1997, p. 1545, § 6; Ga. L. 2005, p. 1030, § 10/SB 55; Ga. L. 2008, p. 1112, § 6/HB 1055.)

RESEARCH REFERENCES

ALR. — Liability of independent accountant to investors or shareholders, 54 ALR2d 324; 46 ALR3d 979; 92 ALR3d 396; 48 ALR5th 389.

Disciplinary action against attorney or accountant for misconduct related to preparation of tax returns for others, 81 ALR3d 1140.

43-3-29. Revocation, suspension, or refusal to renew firm registration or permit.

(a) After notice and hearing, as provided in Code Section 43-3-30, the board, in its discretion, may revoke the registration and permit to practice of a firm if at any time it does not have all the qualifications prescribed by the Code section under which it qualified for registration.

(b) After notice and hearing as provided in Code Section 43-3-30, the board may revoke or suspend the registration of a firm or may revoke, suspend, or refuse to renew its valid permit or may censure the holder of any such permit for any of the following causes in addition to those enumerated in Code Section 43-3-28:

(1) The revocation or suspension of the certificate or registration or the revocation or suspension or refusal to renew the permit to practice of any partner, member, or shareholder required by law to have such certificate, registration, or permit as a condition to the firm's registration or permit;

(2) The cancellation, revocation, suspension, or refusal to renew the authority of the firm, or any partner, member, or shareholder thereof, to practice public accountancy in any other state for any

cause other than voluntary withdrawal or failure to pay registration fees in such other state; or

(3) The failure of such firm to register or renew its registration under Code Section 43-3-21 or the failure of such firm to comply with any of the provisions of Code Section 43-3-23. (Code 1933, § 84-212, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1988, p. 1616, § 5; Ga. L. 1993, p. 123, § 12; Ga. L. 1997, p. 1545, § 7.) -

43-3-29.1. Sanctions.

After notice and hearing as provided in Code Section 43-3-30, the board may impose any one or more of the following sanctions in addition to the actions described in Code Sections 43-3-28 and 43-3-29 for any of the causes described in Code Sections 43-3-28 and 43-3-29:

(1) Require the licensee or licensees to complete successfully the specific courses or types of continuing education as specified by the board or pass special examinations as specified by the board, all at the cost and expense of the licensee or licensees;

(2) Require the licensee or firm holding a live permit to submit to a preissuance review prior to the issuance of any future reports, in a manner and for a duration as set by the board by a reviewer selected by the board at the licensee's or holder's cost and expense; or

(3) Require a licensee or firm holding a valid permit to submit to a peer review of its accounting and auditing practices upon such terms and conditions as shall be determined by the board at the cost and expense of such licensee or holder of a valid permit. (Code 1981, § 43-3-29.1, enacted by Ga. L. 1988, p. 1616, § 6; Ga. L. 1993, p. 123, § 13.)

43-3-30. Adjudicative hearings before board.

(a) The board may initiate proceedings under this chapter either on its own motion or on the complaint of any person.

(b) Notice, rules of procedure, right to review, and any other matters arising with respect to all adjudicative hearings conducted by the board shall be determined in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(c) Before the board shall revoke or suspend a permit, certificate, registration, or practice privilege, it shall provide for a hearing for the holder of such permit, certificate, registration, or practice privilege in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Any person who has exhausted all administrative remedies available within this chapter and who is aggrieved by a final

decision in a contested case is entitled to judicial review in accordance with Chapter 13 of Title 50. (Code 1933, § 84-213, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 2008, p. 1112, § 7/HB 1055.)

43-3-31. Reinstatement of certification or registration; modification of suspension of permit or practice privilege.

Upon written application after a hearing pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," the board may recertificate a certified public accountant or reregister a foreign accountant whose certification or registration has been revoked or may reissue or modify the suspension of a live permit or practice privilege which has been revoked or suspended. (Code 1933, § 84-214, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 2008, p. 1112, § 8/HB 1055.)

43-3-32. Ownership of accountants' working papers; confidentiality of communications to accountants.

(a) All statements, records, schedules, working papers, computer printouts, computer tapes, and memoranda made by a certified public accountant or public accountant incident to, or in the course of, professional service to clients by such certified public accountant or public accountant, except reports submitted by a certified public accountant or public accountant to a client, shall be and remain the property of such certified public accountant or public accountant and his or her partners, fellow shareholders, or fellow members of the firm, in the absence of an express agreement between such certified public accountant or public accountant and the client to the contrary. No such statement, record, schedule, working paper, or memorandum shall be sold, transferred, or bequeathed, without the consent of the client or his personal representative or his assignee, to anyone other than one or more surviving partners, fellow shareholders, or fellow members of the firm of such certified public accountant or public accountant.

(b) All communications between a certified public accountant or public accountant or employee of such certified public accountant or public accountant acting in the scope of such employment and the person for whom such certified public accountant, public accountant, or employee shall have made any audit or other investigation in a professional capacity and all information obtained by a certified public accountant, public accountant, or such an employee in his professional capacity concerning the business and affairs of clients shall be deemed privileged communications in all courts or in any other proceedings whatsoever; and no such certified public accountant, public accountant, or employee shall be permitted to testify with respect to any of such matters, except with the written consent of such person or client or such

person's or client's legal representative, provided that nothing in this subsection shall be construed as prohibiting a certified public accountant, public accountant, or such an employee from:

(1) Disclosing any data required to be disclosed by the standards of the accounting profession in rendering an opinion on the presentation of financial statements or in making disclosure where the practices or diligence of the accountant in preparing, or in expressing an opinion upon, such financial statements are contested;

(2) Disclosing any data where the professional services of the accountant are being contested by or against the client for whom such services were performed or any representative or assignee of such client;

(3) Disclosing any data to other certified public accountants, public accountants, or employees thereof in connection with practice reviews and ethics reviews sponsored by professional groups, the purpose of which reviews is to survey such accountant's business practices, audits, and work papers or to review ethical considerations concerning such accountant; or

(4) Disclosing any data pertaining to an application, investigation by the board, or hearing on its behalf, so long as such data shall be received by the board in camera and shall not be disclosed to the public; and provided, further, that no disclosure provided for in this paragraph shall constitute a waiver of the privilege established in this subsection. (Code 1933, § 84-220, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1988, p. 1616, § 7; Ga. L. 1993, p. 123, § 14; Ga. L. 1997, p. 1545, § 8.)

Cross references. — Privileged communications generally, § 24-9-20 et seq.

Law reviews. — For annual survey of the law of evidence, see 38 Mercer L. Rev. 215 (1986). For annual survey of evidence law, see 56 Mercer L. Rev. 235 (2004).

For note discussing confidential communication privileges in Georgia, see 2 Ga. St. B.J. 356 (1966).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1943, p. 363, § 4 are included in the annotations for this Code section.

O.C.G.A. § 43-3-32 creates a privilege for all confidential communications between an accountant and a client made for or in the rendition of accounting services and all other confidential information concerning the busi-

ness affairs of clients and obtained by the accountant for the purposes of preparing financial reports or giving accounting advice. *Nashville City Bank & Trust Co. v. Reliable Tractor, Inc.*, 90 F.R.D. 709 (M.D. Ga. 1981).

No privilege without accountant-client relationship. — It is elemental that the predicate for the assertion of the accountant-client privilege is that an accountant-client relationship ex-

isted. *GMAC v. Bowen Motors, Inc.*, 167 Ga. App. 463, 306 S.E.2d 675 (1983).

Federal courts should recognize state privileges if possible. — Georgia General Assembly has decided that the accountant-client relationship needs the protection of an evidentiary privilege, and the court agrees that federal courts should recognize state privileges when this can be done at no substantial cost to federal policies. *International Horizons, Inc. v. Committee of Unsecured Creditors*, 16 Bankr. 484 (N.D. Ga. 1981), aff'd, 689 F.2d 996 (11th Cir. 1982).

Accountant's privilege inapplicable in federal question case. — In a federal question case, a state privilege need not be honored if the state privilege is broader than those recognized at common law; thus, in a case based almost totally on federal securities laws, the United States District Court will not recognize an accountant's privilege invoked pursuant to Georgia statutory law. *Osterneck v. E.T. Barwick Indus., Inc.*, 82 F.R.D. 81 (N.D. Ga. 1979).

Bankruptcy court is not required to apply the accountant-client privilege when the bankruptcy proceeding does not involve state claims, there is no accountant-client privilege as a matter of federal common law, and considerations of comity do not require federal courts to embrace the privilege. *International Horizons, Inc. v. Committee of Unsecured Creditors*, 689 F.2d 996 (11th Cir. 1982).

Accountant-client privilege not applied in federal law proceeding initiated by client. — In a federal law proceeding initiated by an accountant's client, in which a committee for unsecured creditors is seeking discovery pursuant to federal law, the court will decline to apply the Georgia accountant-client privilege. *International Horizons, Inc. v. Committee of Unsecured Creditors*, 16 Bankr. 484 (N.D. Ga. 1981), aff'd, 689 F.2d 996 (11th Cir. 1982).

Liability for disclosing information to federal agent. — Accountants are not insulated from liability under state law when the accountants voluntarily disclose information to a federal agent during the course of a federal tax investigation. *Roberts v. Chaple*, 187 Ga. App. 123, 369 S.E.2d 482 (1988).

Liability of accounting firm for letter sent to controller's firm. — With regard to a controller's claims for defamation and tortious interference against an accounting/auditing firm that wrote a letter to the controller's employer that resulted in the controller's termination from employment, the trial court erred by dismissing the complaint after concluding that the alleged defamatory statements were inactionable privileged communications that had not been published since the controller sufficiently alleged malice, the communications between the accounting/auditing firm and the employer were conditionally privileged under O.C.G.A. § 51-5-7, and the controller sufficiently alleged publication of the statements. *Saye v. Deloitte & Touche, LLP*, 295 Ga. App. 128, 670 S.E.2d 818 (2008).

Reliance on statute unreasonable when communications occurred before enactment. — Georgia's statutory accountant-client privilege was not enacted until 1977, which was long after some of the communications at issue in this case. Thus, any reliance by the parties on the confidentiality of their communication was not reasonable. *International Horizons, Inc. v. Committee of Unsecured Creditors*, 16 Bankr. 484 (N.D. Ga. 1981), aff'd, 689 F.2d 996 (11th Cir. 1982).

Privilege inapplicable to client lists. — Requirement under O.C.G.A. § 43-3-32(a) that a client consent to the transfer of the accountant's working papers does not apply to an accounting firm's client list. *Crews v. Wahl*, 238 Ga. App. 892, 520 S.E.2d 727 (1999).

Privilege inapplicable to subpoenas. — O.C.G.A. § 43-3-32 did not apply in an action by the Inspector General of the United States Department of Agriculture to enforce subpoenas seeking information on possible payment errors with respect to Agricultural Stabilization and Conservation Service Programs. *Inspector Gen. of USDA v. Griffin*, 972 F. Supp. 676 (M.D. Ga. 1997).

Privilege is inapplicable to communications which occurred before perpetration of fraud or crime. In re Hall County Grand Jury Proceedings, 175 Ga. App. 349, 333 S.E.2d 389, cert. vacated, 255 Ga. 241, 338 S.E.2d 864 (1985).

Privilege was not necessary when debtors' full disclosure to accountant was guaranteed by the debtors' need for the accountant's certification of their financial statements, and by the unwillingness of a firm of the accountant's stature to make such a certification unless the firm was convinced that the debtors had made full disclosure. *International Horizons, Inc. v. Committee of Unsecured Creditors*, 16 Bankr. 484 (N.D. Ga. 1981), aff'd, 689 F.2d 996 (11th Cir. 1982).

Unsecured creditors permitted access to accountant's work papers. — When an accountant has not convinced the court that the court should recognize the accountant-client privilege in the absence of "compelling justification," and has failed to present such justification, the committee of unsecured creditors will be permitted access to the accountant's financial documents and work papers in its possession. *International Horizons, Inc. v. Committee of Unsecured Creditors*, 16 Bankr. 484 (N.D. Ga. 1981), aff'd, 689 F.2d 996 (11th Cir. 1982).

Audit reports concerning financial condition of debtor's subsidiary. — State law determined the existence of accountant-client privilege to protect audit reports concerning financial condition of debtor's subsidiary, even though the proceeding was subject to the jurisdiction of the bankruptcy court as claims ancillary to a Title XI case. *Providers Fid. Life Ins. Co. v. Tidewater Group, Inc.*, 65 Bankr. 179 (Bankr. N.D. Ga. 1986).

Claims of breach of contract and tortious conspiracy to defraud did not raise the issue of the defendant's financial condition so as to allow the claimant to discover audit reports to which the defendant had not waived the defendant's accountant-client privilege. *Providers Fid. Life Ins. Co. v. Tidewater Group, Inc.*, 65 Bankr. 179 (Bankr. N.D. Ga. 1986).

Accountant upon leaving accounting firm could properly copy records, statements, working papers, and other materials "prepared" by that accountant, but copying such materials "made" by other accountants in the firm was not proper when done for that accountant's own use. *Singer v. Habif, Arogeti & Wynne, P.C.*, 250 Ga. 376, 297 S.E.2d 473 (1982).

Waiver of accountant-client privilege. — Since the defendant's disclosure of audit reports in another proceeding had been compelled by the court, this did not constitute a voluntary waiver of the accountant-client privilege to allow another claimant in a separate proceeding access to the reports. *Providers Fid. Life Ins. Co. v. Tidewater Group, Inc.*, 65 Bankr. 179 (Bankr. N.D. Ga. 1986).

Testimony in regard to accountant's employment itself is admissible. *Gearhart v. Etheridge*, 131 Ga. App. 285, 205 S.E.2d 456, aff'd, 232 Ga. 638, 208 S.E.2d 460 (1974) (decided under Ga. L. 1943, p. 363, § 4).

Cited in *Driscoll v. Shuttler*, 115 F.R.D. 571 (N.D. Ga. 1987).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1943, p. 363, § 4 are included in the annotations for this Code section.

Accountant may not disclose confidential communications for practice

review. — Certified public accountant may not for purpose of practice review disclose to third parties a client's communications to that accountant which are made confidential. 1973 Op. Att'y Gen. No. 73-158 (decided under Ga. L. 1943, p. 363, § 4).

RESEARCH REFERENCES

ALR. — Right of accountant to lien upon client's books and records in former's possession, 76 ALR2d 1322.

Ownership of, and literary property in, working papers and data of accountant, 90 ALR2d 784.

Privileged communications between accountant and client, 33 ALR4th 539.

43-3-33. Injunctions; assistance of Attorney General.

(a) Whenever, in the judgment of the board, any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of Code Section 43-3-35 or any other Code section of this chapter, the board may make application to the superior court of the county in which such acts or practices have occurred or may be reasonably expected to occur for an order enjoining such acts or practices; and upon a showing by the board that such person has engaged or is about to engage in any such acts or practices, an injunction, restraining order, or such other order as may be appropriate shall be granted by such court.

(b) The Attorney General shall assist in the enforcement of this chapter. The board is authorized to retain such attorneys as it deems necessary, with the approval of the Attorney General, to assist the board in bringing any action authorized by law. (Code 1933, § 84-217, enacted by Ga. L. 1977, p. 1063, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, §§ 1, 17 et seq.

43-3-34. Holding oneself out to be a licensed certified public accountant or public accountant; single prohibited act as grounds for injunction or conviction.

The display or uttering by a person of a card, sign, advertisement, or other printed, engraved, or written instrument or device bearing a person's name in conjunction with the words "certified public accountant" or any abbreviation thereof, or "public accountant" or any abbreviation thereof shall be prima-facie evidence in any action brought under Code Section 43-3-33 or 43-3-38 that the person whose name is so displayed caused or procured the display or uttering of such card, sign, advertisement, or other printed, engraved, or written instrument or device and that such person is holding himself or herself out to be a certified public accountant or a public accountant holding a live permit or otherwise claims to be qualified to use such title by virtue of the substantial equivalency practice privilege under subsection (b) of Code Section 43-3-24 or of the firm practice provisions of subsection (b) of Code Section 43-3-21. In any such action, evidence of the commission of a single act prohibited by this chapter shall be sufficient to justify an injunction or a conviction without evidence of a general course of conduct. (Code 1933, § 84-219, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1997, p. 1545, § 9; Ga. L. 2008, p. 1112, § 9/HB 1055.)

RESEARCH REFERENCES

ALR. — Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 ALR 1388.

Single or isolated transactions as falling

within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

43-3-35. Use of titles or devices; false or fraudulent claims; regulation of solicitation of employment.

(a) No individual shall assume or use the title or designation "certified public accountant" or the abbreviation "C.P.A." or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such individual is a certified public accountant unless such individual has received a certificate as a certified public accountant under this chapter, holds a live permit, and all of such individual's offices in this state for the practice of public accountancy are maintained and registered as required under Code Sections 43-3-21 and 43-3-23, provided that a foreign accountant who has registered under Code Section 43-3-20 and who holds a live permit may use the title under which he or she is generally known in his or her country, followed by the name of the country from which he or she received his or her certificate, license, or degree.

(b) No firm or any other person or entity shall assume or use the title or designation "certified public accountant" or the abbreviation "C.P.A." or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such firm, person, or entity is composed of certified public accountants unless such firm, person, or entity is registered as a firm of certified public accountants under Code Section 43-3-21, holds a live permit, and all offices of such firm in this state for the practice of public accountancy are maintained and registered as required under Code Sections 43-3-21 and 43-3-23.

(c) No individual, firm, or any other person or entity shall assume or use: (1) any title or designation likely to be confused with "certified public accountant," including, without limiting the generality of the foregoing, "certified accountant," "enrolled accountant," "licensed accountant," "licensed public accountant," or "registered accountant"; or (2) any abbreviation likely to be confused with "C.P.A.," including, without limiting the generality of the foregoing, "C.A.," "E.A.," "R.A.," "L.A.," or "L.P.A.," provided that a foreign accountant registered under Code Section 43-3-20 who holds a live permit and all of whose offices in this state for the practice of public accountancy are maintained and registered as required under Code Sections 43-3-21 and 43-3-23 may use the title under which he or she is generally known in his or her country, followed by the name of the country from which he or she received his or her certificate, license, or degree.

(d) No individual shall sign or affix his or her name or any trade assumed name used by him or her in his or her profession or business to any opinion or certificate attesting in any way to the reliability of any representation or estimate in regard to any person or organization embracing (1) financial information, or (2) facts respecting compliance with conditions established by law or contract, including but not limited to statutes, ordinances, regulations, grants, loans, and appropriations, together with any wording accompanying, contained in, or affixed on such opinion or certificate, which indicates that he or she has expert knowledge in accounting or auditing unless he or she holds a live permit and all of his or her offices in this state for the practice of public accountancy are maintained and registered under Code Sections 43-3-21 and 43-3-23, provided that this subsection shall not prohibit any officer, employee, partner, member, or principal of any organization from affixing his or her signature to any statement or report in reference to the affairs of such organization with any wording designating the position, title, or office which he or she holds in such organization, nor shall this subsection prohibit any act of a public official or public employee in the performance of his or her duties as such.

(e) No person shall sign or affix, or cause to be signed or affixed, a firm name to any opinion or certificate attesting in any way to the reliability of any representation or estimate in regard to any person or organization embracing (1) financial information, or (2) facts respecting compliance with conditions established by law or contract, including but not limited to statutes, ordinances, regulations, grants, loans, and appropriations, together with any wording accompanying or contained in such opinion or certificate, which indicates that such firm is composed of or employs persons having expert knowledge in accounting or auditing unless the firm holds a live permit and all of its offices in this state for the practice of public accountancy are maintained and registered as required under Code Sections 43-3-21 and 43-3-23.

(f) A licensee shall not use or participate in the use of any form of public communication having reference to his or her professional services which contains a false, fraudulent, misleading, deceptive, or unfair statement or claim. A false, fraudulent, misleading, deceptive, or unfair statement or claim includes but is not limited to a statement or claim which:

- (1) Contains a misrepresentation of fact;
- (2) Is likely to mislead or deceive because it fails to make full disclosure of relevant facts;
- (3) Contains any testimonial, laudatory, or other statement or implication that the licensee's professional services are of exceptional quality, if not supported by verifiable facts;

(4) Is intended or likely to create false or unjustified expectations of favorable results;

(5) Implies educational or professional attainments or licensing recognition not supported in fact;

(6) States or implies that the licensee has received formal recognition as a specialist in any aspect of the practice of public accounting, except in accordance with rules adopted by the board;

(7) Represents that professional services can or will be completely performed for a stated fee when this is not the case or makes representations with respect to fees for professional services that do not disclose all variables that may reasonably be expected to affect the fees that will in fact be charged; or

(8) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(g) The board may by rule or regulation prohibit a licensee from soliciting by any direct personal communication an engagement to perform professional services.

(h) It shall not be a violation of this Code section or chapter for an individual who does not hold a live permit under this chapter but who qualifies for the substantial equivalency practice privilege under subsection (b) of Code Section 43-3-24 to use the title or designation "certified public accountant" or "C.P.A." or other titles to indicate that the person is a certified public accountant, and such individual may provide professional services in this state with the same privileges as a live permit holder so long as the individual complies with paragraph (4) of subsection (b) of Code Section 43-3-24.

(i) It shall not be a violation of this Code section or chapter for a firm that has not registered with the board or obtained a live permit under this chapter and that does not have an office in this state to use the title or designation "certified public accountant" or "C.P.A." or other titles to indicate that the firm is composed of certified public accountants, and such firm may provide professional services in this state with the same privileges as a registered firm with a live permit so long as it complies with subsection (b) of Code Section 43-3-21. (Ga. L. 1908, p. 86, § 1; Penal Code 1910, § 702; Code 1933, § 84-9902; Code 1933, § 84-213, enacted by Ga. L. 1935, p. 85, § 13; Ga. L. 1943, p. 363, § 5; Ga. L. 1968, p. 1232, § 2; Code 1933, § 84-215, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1983, p. 559, § 15; Ga. L. 1993, p. 123, § 15; Ga. L. 1994, p. 97, § 43; Ga. L. 1997, p. 1545, § 10; Ga. L. 2005, p. 1030, § 11/SB 55; Ga. L. 2008, p. 1112, § 10/HB 1055.)

Cross references. — False or fraudulent advertising, § 10-1-420 et seq.

JUDICIAL DECISIONS

Individual accountants in firm subject to city occupational tax. — Accountants who were licensed as certified public accountants, but who worked on the audit staff of a large firm, had no contact with the public, and whose work was the same as others who were not licensed certified public accountants, were engaged in "public accounting" and were subject to the city occupational tax. *City of Atlanta v. Daley*, 257 Ga. 674, 362 S.E.2d 348 (1987).

Business manager not registered as public accountant can testify as an expert bookkeeper. — Witness who is privately employed as a business manager and financial advisor of an office can testify as an expert in bookkeeping even though the witness is not registered as a public accountant. *Stephens v. Parrino & Ware*, 138 Ga. App. 634, 226 S.E.2d 809 (1976), overruled on other grounds, *Mayor of Savannah v. Canady*, 255 Ga. 23, 334 S.E.2d 693 (1985).

OPINIONS OF THE ATTORNEY GENERAL

One maintaining an office for and practicing public accounting without a license is guilty of a misdemeanor. 1948-49 Op. Att'y Gen. p. 294.

Uncertified individual practicing accounting violates chapter although not holding self out as registered or certified. — Person with an established office who is practicing public accounting such as doing audits, rendering reports thereon, and installing accounting systems without a license is violating the statutes although the individual neither calls themselves a registered public accountant nor a certified public accountant.

1948-49 Op. Att'y Gen. p. 293; 1948-49 Op. Att'y Gen. p. 294.

Certified public accountant's signature to report when principals not certified is misdemeanor. — Signature of a certified public accountant to a report for a firm where the principals are not certified, or where one is certified and another is not, would be guilty of a misdemeanor, and all members of the firm and the certified public accountant signing the report of the firm would be equally guilty under the law. 1950-51 Op. Att'y Gen. p. 137.

RESEARCH REFERENCES

C.J.S. — 15A C.J.S., Conspiracy, § 34 et seq. 35 C.J.S., False Pretenses, § 16 et seq. 65 C.J.S., Negligence, §§ 427, 428, 458 et seq.

ALR. — Practices forbidden by state deceptive trade practice and consumer protection acts, 89 ALR3d 449.

43-3-36. Exceptions to operation of chapter.

(a) Nothing contained in this chapter shall prohibit any person who is not a certified public accountant or public accountant from serving as an employee of or an assistant to a certified public accountant or public accountant or firm of certified public accountants or public accountants holding a live permit or a foreign accountant registered under Code Section 43-3-20 and holding a live permit, provided that such employee or assistant shall not issue or attest to any accounting or financial statement over his name.

(b) Nothing contained in this chapter shall prohibit any person from offering to perform or performing for the public, for compensation, any of the following services:

- (1) The recording of financial transactions in books of record;
- (2) The making of adjustments of such transactions in books of record;
- (3) The making of trial balances from books of record;
- (4) Internal verification and analysis of books or accounts of original entry;
- (5) The preparation of unaudited financial statements, schedules, or reports;
- (6) The devising and installing of systems or methods of bookkeeping, internal controls of financial data, or the recording of financial data; or
- (7) The preparation of tax returns and related forms. (Code 1933, § 84-216, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1983, p. 559, § 16; Ga. L. 1993, p. 123, § 16.)

Cross references. — Temporary permits for nonresidents, § 43-3-24.

JUDICIAL DECISIONS

Conduct alleged in complaint did not constitute practice of public accountancy. — Since: (1) the defendants performed an audit as a matter of private agreement pursuant to subcontracts between the parties; (2) the plaintiff did not allege that the defendants held themselves out as licensed public accountants or that the defendants performed account-

ing services for clients; and (3) acting at all times as employees of the defendant corporation, the individual defendants merely verified and analyzed the plaintiff's books and accounts for the benefit of the defendant corporation, the defendants did not practice public accountancy. *Project Control Servs., Inc. v. Reynolds*, 247 Ga. App. 889, 545 S.E.2d 593 (2001).

RESEARCH REFERENCES

ALR. — Practices forbidden by state deceptive trade practice and consumer protection acts, 89 ALR3d 449.

43-3-36.1. Exempted licensees.

Notwithstanding any other provisions of this chapter, any licensee who has attained 70 years of age shall be exempt from any continuing professional education requirements of Code Section 43-3-25 or 43-3-29.1. (Code 1981, § 43-3-36.1, enacted by Ga. L. 1988, p. 1616, § 8; Ga. L. 2000, p. 136, § 43.)

43-3-37. Use of acquired materials in civil action.

The proceedings of and data obtained by a peer review committee or the board pursuant to paragraph (3) of subsection (b) of Code Section 43-3-32 shall not be subject to discovery or introduction into evidence in any civil action, except in a hearing before the board, against a certified public accountant or public accountant for matters which are the subject of evaluation and review by such committee or the board; and no person who was in attendance at a meeting of such committee or board shall be permitted or required to testify in any such civil action, except in a hearing before the board, as to any evidence or the matters produced or presented during the proceedings of such committee or board or as to any findings, recommendations, evaluations, opinions, or actions of such committee or board or any members thereof; provided, however, that any information, documents, or records otherwise available from original sources shall not be construed as immune from discovery or use in any such civil action merely because they were presented during proceedings of such committee or board; and provided, further, that no person who testifies before such committee or board or who is a member of such committee or board shall be prevented from testifying as to matters within his or her knowledge, provided that such witness may not be questioned regarding such witness's testimony before such committee or board or opinions formed by the witness as a result of such hearings of the committee or board. (Code 1981, § 43-3-37, enacted by Ga. L. 1997, p. 1545, § 11; Ga. L. 1998, p. 128, § 43.)

Editor's notes. — Ga. L. 1997, p. 1545, § 11, effective July 1, 1997, redesignated former Code Section 43-3-37 as present Code Section 43-3-38.

43-3-38. Penalty.

Any person who violates this chapter shall be guilty of a misdemeanor. (Code 1933, § 84-218, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-38, as redesignated by Ga. L. 1997, p. 1545, § 11.)

Editor's notes. — Ga. L. 1992, p. 3137, § 2, effective July 1, 1992, repealed former Code Section 43-3-38, which was based on Ga. L. 1982, p. 1782, §§ 1, 2 and Ga. L. 1988, p. 307, § 1, relating to termination.

RESEARCH REFERENCES

ALR. — Injunction as available remedy against prosecution or arrest for conducting business or practicing profession without a license, 167 ALR 915.

CHAPTER 4

ARCHITECTS

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Registered Interior Designers

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43-4-37. Unlawful use of title "registered interior designer."

Cross references. — Professional corporations generally, T. 14, C. 7. Landscape architects, T. 43, C. 23.

Editor's notes. — Ga. L. 1992, p. 3318, designated the existing provisions of this chapter as Article 1, changed all references to "chapter" to "article", and enacted a new Article 2.

Administrative rules and regulations. — Organization, Official Compilation of the Rules and Regulations of the

State of Georgia, State Board of Architects and Interior Designers, Chapter 50-1.

Fees, architects, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Architects and Interior Designers, Chapter 50-5.

Law reviews. — For article discussing site architect or engineer's duty of care to construction workers, see 28 Emory L.J. 291 (1979).

JUDICIAL DECISIONS

Cited in Edenfield v. Hazard, 220 Ga. 373, 138 S.E.2d 884 (1964); Tucker v.

Whitehead, 155 Ga. App. 104, 270 S.E.2d 317 (1980).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 18 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

Am. Jur. Proof of Facts. — Architect's Negligence, 33 POF3d 57.

Am. Jur. Trials. — Architectural Malpractice Litigation, 19 Am. Jur. Trials 231.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 890 et seq. 16D C.J.S., Constitutional

Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

Liability of architect or engineer for improper issuance of certificate, 43 ALR2d 1227.

Right of architect or engineer licensed in one state to recover compensation for services rendered in another state, or in connection with construction in another state, where he was not licensed in the latter state, 32 ALR3d 1151.

Tort liability of project architect for economic damages suffered by contractor, 65 ALR3d 249.

ARTICLE 1

GENERAL PROVISIONS

43-4-1. Definitions.

As used in this chapter, the term:

- (1) "Architect" means an individual technically and legally qualified to engage in the practice of architecture.

(2) "Architectural construction contract administration services" shall include at a minimum the following services:

(A) Visiting the construction site on a regular basis to determine that the work is proceeding in accordance with the technical submissions submitted to the building official at the time the building permit was issued; and

(B) Processing shop drawings, samples, and other submissions required of the contractor by the terms of construction contract documents.

(3) "Board" means the Georgia State Board of Architects and Interior Designers.

(4) "Building" means any structure consisting of foundation, floors, walls, columns, girders, beams, and roof or a combination of any of these parts, with or without other parts or appurtenances.

(5) "Building official" means the person appointed by the county, municipality, or other political subdivision of the state having responsibility for the issuance of building permits and the administration and enforcement of the Georgia State Minimum Construction Codes, or a state fire marshal where there is not such local official.

(6) "Building shell" means a building framework, perimeter and exterior walls, the building core and columns, and other structural, mechanical, and load-bearing elements of the building.

(7) "Building shell system" means a mechanical, plumbing, fire protection, electrical, structural, or motorized vertical transportation system designed for or located within a building shell.

(8) "Interior construction document" means detailed drawings and specifications sealed and signed by a registered interior designer certifying compliance with applicable current building codes, ordinances, laws, and regulations that define the work to be constructed in such form as is required for approval of a construction permit by a building official or fire marshal. Such document may be combined with documents prepared under the responsible control, seal, and signature of other registered or licensed professionals.

(9)(A) "Interior design" means the rendering of or the offering to render designs, consultations, studies, planning, drawings, specifications, contract documents, or other technical submissions and the administration of interior construction and contracts relating to nonstructural interior construction of a building by a registered interior designer. Such term includes:

(i) Space planning, finishes, furnishings, and the design for fabrication of nonstructural interior construction within interior spaces of buildings;

(ii) Responsibility for life safety design of proposed or modification of existing nonstructural and nonengineered elements of construction such as partitions, doors, stairways, and paths of egress connecting to exits or exit ways; and

(iii) Modification of existing building construction so as to alter the number of persons for which the egress systems of the building are designed.

(B) Registered interior designers shall collaborate and coordinate their work with registered architects or engineers for work that is excluded by this definition, including without limitation:

(i) The design of or responsibility for the building shell or any building shell systems; or

(ii) Construction which materially affects building life safety systems pertaining to fire safety protection such as fire-rated vertical shafts in multistory structures and fire-rated protection of structural elements with the exception of incidental restoration of fire protection to elements impacted by nonstructural elements of construction, smoke evacuation, emergency sprinkler systems, and emergency alarm systems.

(10) "Nonstructural interior construction" means the construction of elements which do not include a load-bearing wall, a load-bearing column, or other load-bearing elements of a building essential to the structural integrity of the building.

(11) "Practice of architecture" means the rendering of or offer to render the following services in connection with the design, construction, enlargement, or alteration of a building or group of buildings and the space within and surrounding such buildings, which may have human occupancy or habitation: planning; providing preliminary studies, designs, drawings, specifications, and other technical submissions; the architectural administering of construction contracts; and coordinating elements of technical submissions prepared by others including, as appropriate and without limitation, consulting engineers, registered interior designers, and landscape architects. As part of the practice of architecture, a registered architect may perform such engineering work as is incidental to his or her work. Nothing in this paragraph shall be construed to prohibit a licensed engineer from coordinating technical submittals related to the practice of engineering. Nothing in this paragraph shall be construed to prohibit a registered interior designer from coordinating submittals related to the practice of interior design.

(12) "Registered architect" means a person who is technically and legally qualified and currently registered with the board to practice architecture in the State of Georgia.

(13) "Registered interior designer" means a person who is registered under Article 2 of this chapter as being qualified by education, experience, and examination to use the title "registered interior designer" in the State of Georgia and as further defined in Code Section 43-4-30. Nothing in this paragraph or in this article shall be construed as prohibiting or restricting the practice or activities of an interior decorator or individual offering interior decorating services, including, but not limited to, selection of surface materials, window treatments, wall coverings, paints, floor coverings, and lighting fixtures.

(14) "Registration" means the certificate of registration issued by the board.

(15) "Responsible control" means the amount of control over and detailed knowledge of the content of technical submissions during their preparation as is ordinarily exercised by registered or licensed professionals applying the required professional standard of care, as defined by rules and regulations adopted by the respective boards governing such professionals.

(16) "Technical submissions" means designs, drawings, specifications, studies, and other technical reports prepared or reviewed in the course of professional practice. (Ga. L. 1919, p. 125, § 16; Code 1933, § 84-301; Ga. L. 1952, p. 457, § 1; Ga. L. 1974, p. 162, § 1; Ga. L. 1984, p. 448, § 1; Ga. L. 2000, p. 1527, § 1; Ga. L. 2010, p. 748, § 1/HB 231; Ga. L. 2011, p. 752, § 43/HB 142.)

The 2010 amendment, effective June 2, 2010, substituted "means" for "shall mean" at the beginning of paragraph (5); added paragraphs (6) through (10); redesignated former paragraph (6) as present paragraph (11); in paragraph (11), substituted a semicolon for a comma in three places and inserted a comma in the first sentence and added the last sentence; redesignated former paragraph (9) as present paragraph (12); redesignated former paragraphs (7) and (8) as present paragraphs (13) and (14), respectively; redesignated former paragraphs (10) and (11) as present paragraphs (15) and (16), respectively; in paragraph (15), substituted "or licensed professionals" for "architects" near the middle and substituted "respective boards governing such professionals" for "board" at the end; and substituted "or reviewed in the course of profes-

sional practice" for "in the course of practicing architecture" at the end of paragraph (16).

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, redesignated former paragraph (12) as present paragraph (14) and redesignated former paragraphs (13) and (14) as present paragraphs (12) and (13), respectively.

Law reviews. — For comment on *Rogers v. Medical Ass'n*, 244 Ga. 151, 259 S.E.2d 85 (1979), invalidating Georgia statute requiring Governor's appointments to Composite State Board of Medical Examiners be made solely from nominees submitted by state medical society as an unconstitutional delegation of legislative authority to a private organization, see 29 Emory L.J. 1183 (1980).

JUDICIAL DECISIONS

Cost of interior parts and appurtenances. — Language “with or without other parts or appurtenances” in O.C.G.A. § 43-4-1(2) (now paragraph (4)) was sufficiently clear to notify an unregistered person that, for purposes of O.C.G.A. § 43-4-14, the cost of a building for which the unregistered individual designed only the foundation, floor, exterior walls, and roof would also include the cost of such interior parts and appurtenances as would be reasonably necessary for the building to become functional for the purposes for which it was designed. *Meyer von Bremen v. Georgia State Bd. of Architects*, 259 Ga. 842, 389 S.E.2d 213 (1990).

Cities cannot tax certified architects employed by principals responsible for final design decision. — City

cannot tax engineers and architects pursuant to Ga. L. 1953, Jan.-Feb. Sess., p. 207, § 1 (see O.C.G.A. § 48-13-5) who, although the engineers and architects hold certificates, work as employees in firms in which principals who were responsible for final design decisions hold certificates. *City of Atlanta v. Georgia Soc’y of Professional Eng’rs*, 220 Ga. 62, 137 S.E.2d 41 (1964).

Cited in *Georgia Ass’n of Am. Inst. of Architects v. Gwinnett County*, 238 Ga. 277, 233 S.E.2d 142 (1977); *Perry v. Dudley*, 145 Ga. App. 728, 244 S.E.2d 580 (1978); *Georgia State Bd. for Examination, Qualification & Registration of Architects v. Arnold*, 249 Ga. 593, 292 S.E.2d 830 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Engineers may not design or supervise construction like architects. — Extent to which an engineer may practice should not be determined solely by looking to provisions defining practice of engineering; the legislature did not intend that

engineers should be permitted to plan, design, or supervise construction of structures and buildings to the same extent that an architect may do so. 1967 Op. Att’y Gen. No. 67-144.

RESEARCH REFERENCES

Am. Jur. 2d. — 5 Am. Jur. 2d, Architects, § 1 et seq.

C.J.S. — 6 C.J.S., Architects, § 1 et seq.

ALR. — Construction of contract for compensation of architect, 20 ALR 1356.

What amounts to architectural or engineering services within license requirements, 82 ALR2d 1013.

What constitutes a “building” within restrictive covenant, 18 ALR3d 850.

Liability to one injured in course of construction, based upon architect’s alleged failure to carry out supervisory responsibilities, 59 ALR3d 869.

When statute of limitations begins to run on negligent design claim against architect, 90 ALR3d 507.

43-4-2. Creation of board; composition; qualifications of members; terms of office; vacancies.

There is created the Georgia State Board of Architects and Interior Designers, which shall be composed of nine appointed members. Six of the members shall be registered architects who hold a current license in this state and who shall be residents of this state. Two members shall be registered interior designers who are residents of this state and who have been interior designers for at least ten years immediately preced-

ing the appointment and who shall have passed an examination approved by the board. One member shall be a resident of this state and shall have no connection whatsoever with the practice or profession of architecture or interior design. The members of the predecessor State Board of Architects including the interior designer members who were formerly only full voting members for purposes of Article 2 of this chapter in office on June 30, 2000, shall be members of the Georgia State Board of Architects and Interior Designers and shall serve out the remainder of their respective terms and until their successors are appointed and qualified. The citizen member who is not a practicing architect or interior designer may vote only on matters relating to administration and policy which do not directly relate to practical and scientific examination of architects or interior designers in this state. The Governor shall appoint successors to the present members of the board, as their respective terms of office expire, for a term of office of five years each. The successor members so appointed shall possess the qualifications specified in this Code section and shall be confirmed by the Senate as provided in Code Section 43-1-16. In case a successor is not appointed at the expiration of the term of any member, such member shall hold office until his or her successor has been duly appointed and qualified. Any vacancy occurring in the membership of the board shall be filled by the Governor for the unexpired term, and such member shall be confirmed by the Senate as provided in Code Section 43-1-16. (Ga. L. 1919, p. 125, § 1; Code 1933, § 84-304; Ga. L. 1952, p. 457, § 4; Ga. L. 1972, p. 744, § 1; Ga. L. 1979, p. 610, § 1; Ga. L. 1984, p. 448, § 2; Ga. L. 1986, p. 434, § 1; Ga. L. 2000, p. 1527, § 1.)

RESEARCH REFERENCES

ALR. — Disqualification, for bias or interest, of member of occupation or profession sitting in license revocation proceeding, 97 ALR2d 1210.

43-4-3. Oath of office.

The members of the board, before entering upon the discharge of their duties, shall subscribe to and file with the Secretary of State the constitutional oath of officers. (Ga. L. 1919, p. 125, § 2; Code 1933, § 84-305; Ga. L. 2000, p. 1527, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 58 Am. Jur. 2d, Oath and Affirmation, §§ 1, 3.

43-4-4. Election of board president and vice president.

The board shall elect from its membership a president and a vice president. (Ga. L. 1919, p. 125, § 3; Code 1933, § 84-306; Ga. L. 2000, p. 1527, § 1.)

43-4-5. Maintenance of record of board's proceedings by division director.

The division director shall keep a true record of all proceedings of the board. (Ga. L. 1919, p. 125, § 6; Code 1933, § 84-309; Ga. L. 2000, p. 1527, § 1; Ga. L. 2000, p. 1706, § 19.)

43-4-6. Reimbursement of board members.

Each member of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2. (Ga. L. 1919, p. 125, § 12; Ga. L. 1931, p. 7, § 89A; Code 1933, § 84-311; Ga. L. 1979, p. 635, § 1; Ga. L. 2000, p. 1527, § 1.)

43-4-7. Authority to confer with similar boards of other states and to attend meetings and conferences.

The board, or any member designated by the board, may confer with similar boards of other states or attend meetings or conferences for the purpose of obtaining information for the advancement of the profession and standards thereof. (Ga. L. 1979, p. 635, § 1; Ga. L. 2000, p. 1527, § 1.)

43-4-8. Enforcement of chapter; payment of expenses.

The board shall be charged with the duty of enforcing this chapter and may incur such expenses as shall be necessary, all of which expenses shall be paid as provided in Chapter 1 of this title. (Ga. L. 1919, p. 125, § 7; Code 1933, § 84-310; Ga. L. 2000, p. 1527, § 1.)

43-4-9. Adoption of rules, regulations, and standards of conduct; utilization of Internet.

(a) The board shall adopt all necessary rules, regulations, and standards of conduct, not inconsistent with this chapter and the Constitution and laws of this state and of the United States, to carry out this chapter and to safeguard life, health, and property.

(b) The board shall post all current laws, rules, regulations, and standards of conduct relating to the practice of architecture in this state

on the board's official website. The board shall also provide on the website notification of recent changes in such laws, rules, regulations, or standards and information pertaining to disciplinary actions taken by the board. (Ga. L. 1919, p. 125, § 4; Code 1933, § 84-307; Ga. L. 1974, p. 162, § 4; Ga. L. 1982, p. 1019, § 2; Ga. L. 2000, p. 1527, § 1; Ga. L. 2007, p. 350, § 1/SB 237; Ga. L. 2010, p. 266, § 12/SB 195.)

The 2010 amendment, effective May 20, 2010, deleted the former last two sentences of subsection (b), which read: "Individual notice of changes in such laws, rules, regulations, or standards shall be sent by the board at least once a year to each registered architect and building official. Individual notice may be sent by e-mail or regular mail."

Administrative rules and regulations. — Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of State Board of Architects and Interior Designers, Chapter 50-1 et seq.

43-4-10. Compliance with requirements of article; practice of architecture by firms, sole proprietorships, partnerships, and corporations.

(a) Except as otherwise provided in this article, no person shall practice architecture in this state or use the title "architect" or "registered architect" or any word, letter, figure, or any other device indicating or intending to imply that he or she is an architect unless he or she holds a current registration as an architect in this state.

(b) No firm, sole proprietorship, partnership, limited liability company, corporation, or other similar organization shall be registered as architects. Firms, sole proprietorships, partnerships, limited liability companies, and corporations may practice architecture, as defined by this article, and perform the services heretofore enumerated common to the practice of architecture, provided that all such work and services are performed under the responsible control of an architect registered in this state who is a director, in the case of a corporation, or who is a partner, in the case of a partnership, or who is a member, in the case of a limited liability company, or who is an employee with an ownership interest who has been designated in writing as holding a position of authority within the firm which authorizes him or her to direct the architectural services offered by that firm; and provided, further, that the administration of construction contracts shall be under the responsible control of such registered architect and that such plans, drawings, and specifications shall be prepared under the responsible control of such registered architect and bear the architect's individual signature and seal. (Ga. L. 1919, p. 125, § 21; Code 1933, § 84-302; Ga. L. 1952, p. 457, § 2; Ga. L. 1955, p. 602, § 1; Ga. L. 1974, p. 162, § 2; Ga. L. 1992, p. 3318, § 1; Ga. L. 1993, p. 123, § 17; Ga. L. 2000, p. 1527, § 1.)

Cross references. — False or fraudulent advertising, § 10-1-420 et seq. Professional corporations generally, T. 14, C. 7.

Administrative rules and regulations. — Registration to practice under title of architect, Official Compilation of the Rules and Regulations of the State of

Georgia, State Board of Architects and Interior Designers, Chapter 50-2.

Firms, partnerships, corporations — proper names — architects, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Architects and Interior Designers, Chapter 50-3.

JUDICIAL DECISIONS

Restriction applies only to natural persons. — Word “person” as used in this section was modified by the pronoun “he” which restricts the meaning of the word as used in the law and which compels the construction that the word “person” used in its context means natural persons only. *Folsom v. Summer, Locatell & Co.*, 90 Ga. App. 696, 83 S.E.2d 855 (1954) (see O.C.G.A. § 43-4-10).

There is no prohibition against corporation using title “architects and engineers” in the corporation’s contracts. *Folsom v. Summer, Locatell & Co.*, 90 Ga. App. 696, 83 S.E.2d 855 (1954).

Contract for architectural services by nonarchitect void. — It is forbidden for any individual or any firm no member of which is an architect to enter into a contract for performance of architectural services, and such contracts are void. *Boroughs, Dale & Griffin v. St. Elias E. Orthodox Church*, 120 Ga. App. 434, 170 S.E.2d 865 (1969).

Joint contract when only one of three is unlicensed not void. — Contracts to perform architectural services on part of one or more persons none of whom is a licensed architect are void, but fact that one of three people jointly agreeing to perform such services is not licensed, the others being properly registered as archi-

tects, will not void contract when no fraud or deception is practiced. *Boroughs, Dale & Griffin v. St. Elias E. Orthodox Church*, 120 Ga. App. 434, 170 S.E.2d 865 (1969).

Cities cannot tax certified architects employed by principals responsible for final design decisions. — City cannot tax engineers and architects pursuant to Ga. L. 1953, Jan.-Feb. Sess., p. 207, § 1 (see O.C.G.A. § 48-13-5) who, although the engineers and architects hold certificates, work as employees in firms in which principals who were responsible for final design decisions hold certificates. *City of Atlanta v. Georgia Soc’y of Professional Eng’rs*, 220 Ga. 62, 137 S.E.2d 41 (1964).

Liability for malpractice. — Fact that an architectural firm is not a professional corporation does not mean it is incapable of committing and being liable for professional malpractice by and through its individual agents. Under former O.C.G.A. § 43-4-10(c), a corporation may not be registered to practice architecture but may practice only through registered individuals. *Housing Auth. v. Gilpin & Bazemore/Architects & Planners, Inc.*, 191 Ga. App. 400, 381 S.E.2d 550, appeal dismissed, *Housing Auth. v. Greene*, 259 Ga. 435, 383 S.E.2d 867 (1989).

OPINIONS OF THE ATTORNEY GENERAL

Local officials may issue building permit without architect’s signature on documents. — Former Code 1933, § 84-9903 (see O.C.G.A. § 43-4-17) placed no obligation upon county or municipal

building officials to accept only those construction documents which are properly signed and sealed by an architect or engineer before issuing a permit. 1977 Op. Att’y Gen. No. 77-31.

RESEARCH REFERENCES

ALR. — Responsibility of one acting as architect for defects or insufficiency of work attributable to plans, 25 ALR2d 1085.

Practice of architecture by corporation, 56 ALR2d 726.

43-4-11. Qualifications of applicants for examination or certificate of registration.

(a) Any person may apply to the board for such examinations as are required for certification under this article if qualified as set forth in subsection (b) of this Code section, or any person who has been registered as an architect by another jurisdiction may apply for a certificate of registration if qualified as set forth in subsection (c) of this Code section. No person shall be eligible for registration as an architect who has been found by the board to have committed any of the acts set forth in this article for which an architect's certificate might be revoked or suspended unless that individual establishes to the satisfaction of the board that he or she has fully reformed.

(b) The examinations shall be the examinations prepared and graded by the National Council of Architectural Registration Boards (NCARB). The candidate for examination shall submit to the board satisfactory evidence of one of the following qualifications:

(1) A professional degree in architecture from a school or college approved by the National Architectural Accrediting Board and practical experience as the board, by rules and regulations uniformly applied, shall deem appropriate. The board may adopt as its rules and regulations those guidelines published from time to time by the National Council of Architectural Registration Boards;

(2) A minimum of ten years' practical experience, including academic training, following completion of high school or the equivalent thereof, as the board, by rules and regulations uniformly applied, shall deem appropriate. An individual who intends to qualify as a candidate for examination under the provisions of this paragraph shall notify the board of such intent in writing prior to July 1, 1985. After July 1, 1985, all candidates for examination shall meet the requirements of paragraph (1) of this subsection; provided, however, that those candidates and only those candidates who have met the requirements of this paragraph shall be admitted as a candidate for examination; or

(3) A bachelor's degree in architectural engineering technology from a school or college in this state approved by the Accrediting Board for Engineering and Technology, or any other bachelor's degree with a substantial concentration in architecture approved by the

board from a board approved school or college in this state, and at least six years of practical experience as the board, by regulations uniformly applied, shall deem appropriate. An individual who intends to qualify as a candidate for examination under the provisions of this paragraph shall notify the board of such intent in writing prior to July 1, 2004. After July 1, 2004, all candidates for examination shall meet the requirements of paragraph (1) of this subsection.

(c) The applicant for a certificate of registration who has been registered as an architect by another jurisdiction shall hold a National Council of Architectural Registration Boards' certificate and a certificate of registration in such other jurisdiction, both of which shall be current and in good standing in order to meet the requirements of this subsection.

(d) The board may require applicants under subsection (c) of this Code section to provide such other evidence as the board may require to demonstrate knowledge of professional practice. (Ga. L. 1919, p. 125, § 18; Code 1933, § 84-303; Ga. L. 1952, p. 457, § 3; Ga. L. 1955, p. 602, § 2; Ga. L. 1961, p. 462, §§ 1-3; Ga. L. 1963, p. 383, § 1; Ga. L. 1971, p. 836, § 1; Ga. L. 1972, p. 545, § 1; Ga. L. 1974, p. 162, § 3; Ga. L. 1982, p. 1019, § 3; Ga. L. 1983, p. 734, § 1; Ga. L. 1984, p. 448, § 3; Ga. L. 1984, p. 595, § 1; Ga. L. 1990, p. 560, § 1; Ga. L. 1992, p. 3318, § 1; Ga. L. 2000, p. 1527, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2004, p. 606, § 1; Ga. L. 2007, p. 350, § 2/SB 237.)

Administrative rules and regulations. — Registration to practice under title of architect, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Architects and Interior Designers, Chapter 50-2.

Examinations, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Architects and Interior Designers, Chapter 50-4.

Education and acceptable practical experience — architects, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Architects and Interior Designers, Chapter 50-7.

Law reviews. — For article on the effect on receiving government-issued licenses after a conviction based on a nolo contendere plea, see 13 Ga. L. Rev. 723 (1979).

JUDICIAL DECISIONS

If license law enacted to protect public, all practitioners must be licensed. — When statute requiring license and registration for those seeking to engage in practice of trade or profession is not enacted to raise revenue, and the statute's primary intent is protection of

the public from injury by incompetent, irresponsible, or unfit persons practicing such trade or profession, only those meeting the prerequisites of the statute may engage in such practice. *Brown v. Glass*, 46 Ga. App. 323, 167 S.E. 722 (1933).

RESEARCH REFERENCES

ALR. — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

Grant or denial of license to practice architecture, 2 ALR4th 1103.

43-4-12. Certificate of registration; registration required; professional development requirements for renewal.

A certificate of registration as a registered architect shall be valid for two years and shall be renewed biennially as provided by rule of the board. It is unlawful to identify oneself as being able to practice architecture in this state without a current and valid registration in this state. An applicant for a renewal of a certificate of registration shall meet such professional development requirements as the board may require by rule or regulation. Such rule or regulation shall describe professional development activities acceptable to the board and the form of documentation of such activities required by the board. The board shall be authorized to waive the professional development requirement in cases of hardship, disability, age, illness, or under such other circumstances as the board deems appropriate. Failure to meet the minimum qualifications for renewal of a license shall be grounds for denial of a renewal application. (Ga. L. 1919, p. 125, § 21; Code 1933, § 84-314; Ga. L. 1982, p. 1019, § 4; Ga. L. 2000, p. 1527, § 1; Ga. L. 2000, p. 1706, § 19.)

43-4-13. Suspension or revocation of certificate; reprimand; hearing; reinstatement.

(a) In addition to the authority provided in Code Section 43-1-19, the board shall have the power to suspend or revoke the certificate of registration or reprimand any registrant who is found by the board to have:

(1) Committed any fraud, deceit, or misrepresentation in obtaining a certificate of registration;

(2) Committed any gross negligence, incompetence, unprofessional conduct, or recklessness in his or her professional practice;

(3) Permitted the use of his or her seal by any firm, partnership, limited liability company, or corporation without complying with the provisions of Code Section 43-4-10 as to his or her personal direction and supervision of architectural services performed by such firm, sole proprietorship, partnership, limited liability company, or corporation or the provisions of Code Section 43-4-16;

(4) Been convicted by any court of record of the United States of any act which would constitute a felony or a crime involving moral

turpitude in this state or a plea of nolo contendere or the affording of first offender treatment to any such charge; or

(5) Violated this article or any rule, regulation, or standard of conduct promulgated by the board pursuant to the powers conferred upon it by this article.

(b) Prior to revoking or suspending a registrant's certificate, the board shall provide for a hearing into the charges against the registrant. The board shall issue a notice of hearing to the registrant in compliance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," at least ten days prior to the hearing. The hearing will be conducted in accordance with the procedures set forth in Chapter 13 of Title 50 and this article.

(c) The board may reinstate a registration to any person whose registration has been revoked who has met the qualifications for reinstatement. Application for the reissuance of said registration shall be made in such a manner as the board may direct and shall be accompanied by a fee established by the board. Neither the denial of a request for reinstatement of a revoked registration nor the refusal to issue a previously denied registration shall be considered to be a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Ga. L. 1919, p. 125, §§ 23, 24; Code 1933, § 84-319; Ga. L. 1955, p. 602, § 4; Ga. L. 1974, p. 162, § 8; Ga. L. 1992, p. 3318, § 1; Ga. L. 1993, p. 123, § 18; Ga. L. 2000, p. 1527, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, "Chapter 13" was substituted for "Article 13" in two places in subsection (b).

Administrative rules and regulations. — Standards of conduct — architects, Official Compilation of the Rules

and Regulations of the State of Georgia, State Board of Architects, Chapter 50-8.

Law reviews. — For article on the effect on receiving government-issued licenses after a conviction based on a nolo contendere plea, see 13 Ga. L. Rev. 723 (1979).

JUDICIAL DECISIONS

Misrepresentation not regarded by board in issuing certificate cannot be basis for revoking certificate; the misrepresentation must be material to issu-

ing the certificate. *Doughtery County Council of Architects v. Beckanstin*, 100 Ga. App. 790, 112 S.E.2d 423 (1959).

RESEARCH REFERENCES

ALR. — Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 ALR 1388.

Revocation or suspension of license to practice architecture, 58 ALR3d 543.

43-4-14. Practice of architecture; qualifications and registration; exempt structures and persons; design-build contracts; predesign services; construction contract administration services.

(a) In order to safeguard health, safety, and welfare, no person shall be allowed to practice architecture unless he or she has the qualifications and competency required by this article. Any person who is practicing architecture as defined in paragraph (11) of Code Section 43-4-1 shall be required to register under this article and to secure all renewals of such registration before beginning or continuing to practice architecture.

(b) Construction documents for the following structures do not require the seal of a registered architect:

(1) One and two-family residences and domestic outbuildings regardless of cost;

(2) Any building classified as an agricultural occupancy upon any farm for the use of any farmer; any state owned farmer's market;

(3) Any building which is a single story building, not exceeding more than 5,000 square feet in area, except new or existing assembly occupancies, educational occupancies, health care occupancies, correctional or detention facilities, hotels, dormitories or lodging facilities, multifamily housing or apartment complexes, and care facilities;

(4) Preengineered buildings that are one story in height, except new or existing assembly occupancies, educational occupancies, health care occupancies, correctional or detention facilities, hotels, dormitories or lodging facilities, multifamily housing or apartment complexes, care facilities, and facilities classified as high hazard; provided, however, that the services of a duly registered architect shall be required for the design of any business or mercantile occupancies that exceed 5,000 square feet in area that are incidental to the operation in such building; and

(5) Nonstructural interior construction within existing or planned structures which were designed by a registered architect, where drawings and specifications are prepared by a registered interior designer who by sealing and signing such interior construction documents submits to the responsible building official certification that the plans and specifications as submitted are in compliance with the applicable current building codes and regulations in effect.

(c) The following persons are exempt from registration as an architect in this state:

(1) A nonresident who holds a license to practice architecture in the state or country in which he or she resides and holds an NCARB

certificate, but who is not registered in this state, may offer architectural services in a response to a request for qualifications, an interview, or a design competition only. Any offering or practice beyond this exception shall require registration as an architect in Georgia;

(2) An employee of a registered architect or firm under subsection (b) of Code Section 43-4-10 who is not in charge of design or supervision and who works under the supervision of a registered architect;

(3) An employee of the United States government while working in the scope of his or her employment for the United States government; and

(4) A registered professional engineer or his or her employee or subordinate under his or her responsible supervising control may perform architectural services which are incidental to such engineering practice; provided, however, that no professional engineer shall practice architecture or use the designation "architect" or any term derived therefrom unless registered under this article.

(d) Nothing in this article shall be construed to prohibit interior designers from performing services authorized by Article 2 of this chapter.

(e) Nothing in this article shall be construed to prohibit a general contractor for construction from offering to perform a design-build contract; provided, however, that such offer shall clearly indicate at the time of such offer that all design services shall be performed by a duly licensed and registered architect or engineer in compliance with all other provisions of this chapter.

(f) Nothing in this article shall be construed to mean that predesign services, as defined in Code Section 50-22-7, are required to be performed exclusively by architects.

(g) Nothing in this article shall be construed to mean that construction contract administration services are required to be performed exclusively by architects. (Ga. L. 1919, p. 125, § 15; Code 1933, § 84-321; Ga. L. 1952, p. 457, § 8; Ga. L. 1974, p. 162, § 10; Ga. L. 1982, p. 903, §§ 1, 2; Ga. L. 1992, p. 6, § 43; Ga. L. 1992, p. 3318, § 1; Ga. L. 2000, p. 1527, § 1; Ga. L. 2001, p. 741, § 1; Ga. L. 2010, p. 748, § 2/HB 231.)

The 2010 amendment, effective June 2, 2010, substituted "paragraph (11)" for "paragraph (6)" in the second sentence of subsection (a); and, in subsection (b), added "Construction documents for" at the beginning, and rewrote paragraph (b)(5).

JUDICIAL DECISIONS

Constitutionality. — Exception for buildings costing less than \$100,000 is not unconstitutionally vague. *Meyer von Bremen v. Georgia State Bd. of Architects*, 259 Ga. 842, 389 S.E.2d 213 (1990).

Cost of building. — There is a rational relationship between the cost of a building and the stated purpose of O.C.G.A. § 43-4-14 “to safeguard life and property.” *Meyer von Bremen v. Georgia State Bd. of Architects*, 259 Ga. 842, 389 S.E.2d 213 (1990).

Language “with or without other parts or appurtenances” in O.C.G.A. § 43-4-1(2) (now paragraph (4)) was sufficiently clear to notify an unregistered person that, for purposes of O.C.G.A. § 43-4-14, the cost of a building for which the unregistered person designed only the foundation, floor, exterior walls, and roof would also include the cost of such interior parts and appurtenances as would be reasonably necessary for the building to become functional for the purposes for which the building was designed. *Meyer von Bremen v. Georgia State Bd. of Architects*, 259 Ga. 842, 389 S.E.2d 213 (1990).

County engineer may design fire station. — Design and supervision of building of fire station by professional engineer employee of county does not con-

stitute unlawful practice of architecture since building fire station falls within legislative definitions of both professions and because this title explicitly recognizes some overlap between the professions. *Georgia Ass’n of Am. Inst. of Architects v. Gwinnett County*, 238 Ga. 277, 233 S.E.2d 142 (1977).

Structure designed to serve as commercial office and residence not within residence exemption of this section. *Dudley v. Monsour*, 155 Ga. App. 269, 270 S.E.2d 686 (1980) (see O.C.G.A. § 43-4-14).

Plaintiff has burden of proving entitlement to an exemption under provision that no person shall be required to register as an architect in order to make plans and specifications for or supervise erection, enlargement, or alteration of any one- or two-family residence buildings, regardless of cost. To rule otherwise would be to require that any defendant in suit to collect for professional services must negate every possible exception to applicable licensing statute in order to raise statute as a defense. *Dudley v. Monsour*, 155 Ga. App. 269, 270 S.E.2d 686 (1980).

Cited in Georgia State Bd. for Examination, Qualification & Registration of Architects v. Arnold, 249 Ga. 593, 292 S.E.2d 830 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Authority to draft engineering plans containing incidental architectural work. — Exemption in O.C.G.A. § 43-4-14 clearly authorizes a registered

professional engineer to draft and file engineering plans, drawings, and specifications that contain incidental architectural work. 1982 Op. Att’y Gen. No. 82-26.

RESEARCH REFERENCES

ALR. — Responsibility of one acting as architect for defects or insufficiency of work attributable to plans, 25 ALR2d 1085.

Single or isolated transactions as falling within provisions of commercial or occu-

pational licensing requirements, 93 ALR2d 90.

Liability to one injured in course of construction, based upon architect’s alleged failure to carry out supervisory responsibilities, 59 ALR3d 869.

43-4-15. Enforcement of chapter by officials responsible for enforcing building construction codes.

Except as provided in Code Section 25-2-14, it shall be the duty of all public officials charged with the responsibility of enforcing codes related to the construction of buildings to require compliance with Code Section 43-4-14 before architectural plans, drawings, and specifications are approved for construction. Except as provided in Code Section 25-2-14, no building subject to Code Section 43-4-14 and requiring the services of an architect shall be built without such approval prior to construction. (Code 1933, § 84-321.1, enacted by Ga. L. 1981, p. 822, § 1; Ga. L. 1982, p. 1019, §§ 1A, 4A; Ga. L. 2000, p. 1527, § 1.)

Cross references. — Enforcement of building codes generally, § 8-2-26. Regulation of fire and other hazards to persons and property, T. 25, C. 2. Prohibition

against use of construction plans and specifications not prepared by or under supervision of registered professional engineer or architect, § 43-15-24.

OPINIONS OF THE ATTORNEY GENERAL

Approval of plans submitted under Fire Safety Code. — Approval of proposed building plans submitted pursuant to the Fire Safety Code is governed by O.C.G.A. § 25-2-14. 1987 Op. Att'y Gen. No. 87-8.

State Fire Marshal can approve any set of plans which come under jurisdiction and which are under the classifications enumerated in O.C.G.A. § 25-2-14, regardless of what features the plans contain, if the plans have the seal of either an architect or an engineer or otherwise have the approval of the commissioner and are in compliance with other applicable codes. 1987 Op. Att'y Gen. No. 87-8.

Approval of engineer's plan with incidental architectural work. — O.C.G.A. § 43-4-15 does not prohibit a public official from approving a registered

professional engineer's plan, drawing, or specification that lacks a registered architect's seal or signature but contains incidental architectural work. 1982 Op. Att'y Gen. No. 82-26.

Exemption in O.C.G.A. § 43-4-14 clearly authorizes a registered professional engineer to draft and file engineering plans, drawings, and specifications that contain incidental architectural work. 1982 Op. Att'y Gen. No. 82-26.

Approval of architect's plan with incidental engineering work. — O.C.G.A. § 43-4-15 does not bar a public official from approving a registered architect's plan, drawing, or specification that does not have a registered professional engineer's seal but contains incidental engineering work. 1982 Op. Att'y Gen. No. 82-26.

43-4-16. Architect seal; documents required to be sealed; requirements to be met before being sealed; assumption of responsibility; notation if not furnishing construction administration; violation and penalties; documents prepared by registered interior designer.

(a) Every architect registered under this chapter shall have a seal in the design authorized by the board, bearing the registrant's name, certificate number, and the legends "Registered Architect" and "State of Georgia."

(b) Plans, specifications, drawings, reports, or other architectural documents issued for the purpose of obtaining a building permit or for other requirements set forth by law shall be sealed by the architect and across the face of the seal shall be affixed the signature of the owner of the seal. The location of the seal on such documents, the identification of the pages which must be sealed, and the form of any title blocks may be established by the board in its rules and regulations.

(c) No plans, specifications, drawings, reports, or other documents shall be sealed and signed by an architect unless:

(1) The architect has a current registration to practice in this state and is competent in the subject matter of the documents by virtue of education or experience or both;

(2) The architect personally prepared the plans, specifications, drawings, reports, or other documents, or the plans, specifications, drawings, reports, or other documents were prepared under the architect's responsible control as provided in subsection (b) of Code Section 43-4-10; and

(3) The architect has been given full authority in writing by the original architect to make document revisions and has made a substantive review and inspection of the documents with regard to the laws and regulations of this state, and the documents are prototypical drawings. For purposes of this paragraph, prototypical drawings are drawings that may be prepared by an architect licensed in any country or United States jurisdiction, that have been prepared in connection with the design of a commercial chain establishment, and that have been successfully constructed in other states or countries.

(d) The registered architect who signs and seals the plans, specifications, drawings, reports, or other documents shall be considered the architect of record.

(e) No registered architect shall affix his or her seal to any plan, specification, drawing, report, or other document unless he or she has assumed the responsibility for the accuracy and adequacy of the work involved.

(f) If the registered architect who sealed the technical submissions submitted to the building official at the time the building permit is issued has not been employed to furnish construction administration services, he or she shall so note on such technical submissions in such manner as defined by board rules. If the architect's responsibility for construction contract administration is terminated following the issuance of a building permit, the building official shall be notified by the architect in writing accordingly.

(g) Any violation of this Code section shall be grounds for the suspension or revocation of the registration of the architect.

(h) Nothing in this Code section shall be construed to prohibit a registered architect from sealing drawings or documents prepared by a registered interior designer when such registered architect has reviewed or supervised the preparation of the drawings or documents as provided in Code Section 43-4-33.

(i) Nothing in this Code section shall be construed to prohibit a licensed engineer from sealing engineering drawings and documents as provided in Code Section 43-4-14. (Ga. L. 1955, p. 602, § 5; Ga. L. 1974, p. 162, § 11; Ga. L. 1992, p. 3318, § 1; Ga. L. 1993, p. 123, § 19; Ga. L. 2000, p. 1527, § 1; Ga. L. 2001, p. 741, § 2.)

JUDICIAL DECISIONS

Only members, not board itself, may petition. — While it is true that the Act creating the Georgia State Board of Examination, Qualification and Registration of Architects authorizes the Board to file equitable petition in the Board's own name, there is no way the Board can bring the petition as provided by this section except through the Board's members acting in the member's official capacities. *Harvey v. Flatman*, 217 Ga. 764, 125 S.E.2d 55 (1962) (see O.C.G.A. § 43-4-16).

Injunction provisions inapplicable

to city building inspectors. — Provisions of former Code 1933, § 84-9903 (see O.C.G.A. § 43-4-17) that officer or citizen may apply for injunction against any person violating provisions of former Code 1933, § 84-301 et seq. (see O.C.G.A. Art. 1, Ch. 4, T. 43) applied only to the enumerated class of persons coming within article provisions; there is nothing in the article that pertains to duties or conduct of municipal building inspectors. *Edenfield v. Hazard*, 220 Ga. 373, 138 S.E.2d 884 (1964).

43-4-17. Unlawful practice of architecture; enforcement; injunctions.

(a) Any person who uses the title "architect" or "registered architect" or uses any word, letters, or figures indicating or intending to imply that the person using the same is an architect or registered architect without compliance with this article, or who makes any willfully false oath or affirmation in any matter or proceeding where an oath or affirmation is required by this article, or who practices architecture without compliance with this article shall be guilty of a misdemeanor.

(b) It shall be the duty of all duly constituted officers of the law of this state, or any political subdivision thereof, to enforce this article and to prosecute any persons violating this article. Upon application of any officer or citizen of this state complaining that this article has been violated by any person and upon proof of such violation, the superior courts of this state are authorized to and shall enjoin further violations of this article. (Ga. L. 1919, p. 125, § 26; Code 1933, § 84-9903; Ga. L. 1953, Jan.-Feb. Sess., p. 387, § 1; Ga. L. 1982, p. 3, § 43; Ga. L. 1992, p. 3318, § 1; Ga. L. 2000, p. 1527, § 1.)

JUDICIAL DECISIONS

County engineer designing fire station not unlawful practice of architecture. — Design and supervision of building of fire station by professional engineer employee of county does not constitute unlawful practice of architecture since building of fire station falls within legislative definitions of both professions and because the Code explicitly recognizes some overlap between the professions. *Georgia Ass'n of Am. Inst. of Architects v. Gwinnett County*, 238 Ga. 277, 233 S.E.2d 142 (1977).

Provisions inapplicable to duties or conduct of municipal building inspectors. — Provisions of former Code 1933, § 84-9903 (see O.C.G.A. § 43-4-17) that an officer or citizen may apply for injunction against any person violating provisions of former Code 1933, § 84-301 et seq. (see O.C.G.A. Ch. 4, T. 43) applied only to class of persons enumerated in that chapter; nothing in that chapter pertains to duties or conduct of municipal building inspectors. *Edenfield v. Hazard*, 220 Ga. 373, 138 S.E.2d 884 (1964).

OPINIONS OF THE ATTORNEY GENERAL

Only officers of the law are authorized to enforce provisions of former Code 1933, ch. 84-3 (see O.C.G.A. Ch. 4, T. 43). 1977 Op. Att'y Gen. No. 77-31.

Building officials may accept construction documents not signed by architect. — Statute placed no obligation upon county or municipal building officials to accept only those construction documents which are properly signed and sealed by an architect or engineer before

issuing a permit. 1977 Op. Att'y Gen. No. 77-31 (see O.C.G.A. § 43-4-17).

Opinion of the Attorney General No. 77-31 is still a correct interpretation of O.C.G.A. § 43-4-17; however, in certain circumstances other statutes do place a duty on local building officials to accept only construction documents having the seal and signature of an architect. 1984 Op. Att'y Gen. No. 84-30.

43-4-17.1. Redesignated.

Editor's notes. — Ga. L. 2000, p. 1527, § 1, redesignated this Code section as Code Section 43-4-18.

43-4-18. Cease and desist orders; violations; notice and hearing; judicial review.

(a) Notwithstanding any other provisions of the law to the contrary, upon the board determining that a person is violating the provisions of Code Section 43-4-14, 43-4-16, or 43-4-17, the board may issue a cease and desist order prohibiting the person from committing further violations and may impose a fine not to exceed \$10,000.00 for each violation. In determining the fine amount to be imposed, the board shall consider the severity of the violation.

(b) For purposes of this Code section, each day a person is in violation of the provisions of Code Section 43-4-14, 43-4-16, or 43-4-17 shall constitute a separate violation.

(c) A determination by the board pursuant to subsection (a) of this Code section shall be made only after notice to such person is given and a hearing is held.

(d) Initial judicial review of any decision of the board made pursuant to this Code section or any action for enforcement thereof shall be available solely in the superior court of the county of domicile of the board.

(e) Nothing in this Code section shall be construed to prohibit the board from seeking remedies otherwise available by statute without first seeking a cease and desist order in accordance with the provisions of this Code section. (Code 1981, § 43-4-17.1, enacted by Ga. L. 1986, p. 434, § 2; Code 1981, § 43-4-18, as redesignated by Ga. L. 2000, p. 1527, § 1; Ga. L. 2007, p. 350, § 3/SB 237.)

Editor's notes. — Former Code Section 43-4-18, relating to termination of the State Board of Architects and based on Ga. L. 1982, p. 1019, §§ 1, 5; Ga. L. 1984, p. 448, § 4; and Ga. L. 1988, p. 313, § 1, was repealed by Ga. L. 1992, p. 3137, § 3, effective July 1, 1992.

Ga. L. 2007, p. 350, § 4, not codified by the General Assembly, provides that the amendment to this Code section shall apply to violations committed on or after May 24, 2007.

JUDICIAL DECISIONS

Cited in Meyer von Bremen v. Georgia State Bd. of Architects, 259 Ga. 842, 389 S.E.2d 213 (1990).

43-4-19. Issuance of restraining order or injunction.

As cumulative of any other remedy or criminal prosecution, whenever it appears to the board that any person, firm, sole proprietorship, partnership, limited liability company, or corporation is or has been violating any of the provisions of this article, or the lawful rules, regulations, or orders of the board, or any of the laws of this state relating to the practice of architecture, the board, on its own motion, may bring an action in its own name in the superior courts of this state alleging the facts and praying for a temporary restraining order and an injunction against such person, firm, sole proprietorship, partnership, limited liability company, or corporation, restraining him, her, or it from violating such law, order, rule, or regulation. Upon proof of such facts, the court shall issue a restraining order or injunction, or both, without requiring allegation or proof that the petitioner therefor has no adequate remedy at law. (Code 1981, § 43-4-19, enacted by Ga. L. 2000, p. 1527, § 1.)

ARTICLE 2

REGISTERED INTERIOR DESIGNERS

43-4-30. “Registered interior designer” defined.

As used in this article, the term “registered interior designer” means a person registered under this article as being qualified by education, experience, and examination to use the title “registered interior designer.” In general, an interior designer performs services including preparation of documents relative to nonstructural interior construction, furnishings, finishes, fixtures, and equipment. (Code 1981, § 43-4-30, enacted by Ga. L. 1992, p. 3318, § 2; Ga. L. 2010, p. 748, § 3/HB 231.)

The 2010 amendment, effective June 2, 2010, in the last sentence, substituted “nonstructural” for “nonload-bearing” and inserted “finishes,” near the end.

43-4-31. Duty of State Board of Architects and Interior Designers to grant certificates and administer provisions of article; registry.

The Georgia State Board of Architects and Interior Designers shall grant certificates and administer the provisions of this article, and the board shall keep a registry of registered interior designers. (Code 1981, § 43-4-31, enacted by Ga. L. 1992, p. 3318, § 2; Ga. L. 2000, p. 1527, § 2.)

43-4-32. Application for certificate of registration; requirements; term of certificate; renewal.

(a) Any person wishing to use the title “registered interior designer” shall apply to the board for a certificate of registration as a registered interior designer.

(b) Each applicant for certification as a registered interior designer shall meet the following requirements:

- (1) Is at least 21 years of age;
- (2) Has submitted a completed application as required by the board;
- (3) Has submitted the fees required by the board;
- (4) Provides proof of having passed the examination promulgated by the National Council for Interior Design Qualification or an examination approved by the board; and
- (5) Except as otherwise provided in subsection (c) of this Code section, provides proof that the applicant has acquired a minimum

four-year degree or first professional degree conferred by a college or university whose program is accredited by the National Architectural Accrediting Board or by another national or regional accrediting organization recognized by the board in a program of study in architecture or in a program of study in interior design approved by the Council for Interior Design Accreditation or in a substantially equivalent program of study approved by the board.

(c) The examination requirement and education requirement specified in paragraph (4) of subsection (b) of this Code section shall be waived by the board until June 30, 1996, for any applicant who provides proof satisfactory to the board that the applicant has been an interior designer for at least ten years immediately prior to the date of the application and who:

(1) Provides proof of having passed the entire examination promulgated by the National Council for Interior Design Qualification or an examination approved by the board; or

(2) Has a four-year degree conferred by a college or university and who passes an examination approved by the board on life safety and accessibility codes, which examination is passed after January 1, 1990, and prior to the application for a certificate of registration.

(d) A certificate of registration as a registered interior designer shall be valid for two years and shall be renewed biennially. An applicant for renewal of a certificate of registration shall pay a renewal fee and shall meet such continuing education requirements as the board may require by rule or regulation. The continuing education requirements shall not exceed 40 hours biennially. (Code 1981, § 43-4-32, enacted by Ga. L. 1992, p. 3318, § 2; Ga. L. 1994, p. 1759, § 1; Ga. L. 2008, p. 1112, § 11/HB 1055.)

Administrative rules and regulations. — Registered interior designer registration, renewal, and reinstatement, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Architects, Chapter 50-9.

Registered interior designer registration requirements, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Architects, Chapter 50-10.

43-4-33. Form of certificate of registration; seal.

(a) The board shall prescribe the form of a certificate of registration as a registered interior designer issued pursuant to the provisions of this article.

(b) A registered interior designer shall be authorized to have a seal separate from the seal of registered architects. The seal of a registered interior designer shall be applied to drawings or other documents prepared by or under the responsible control of the registered interior

designer, provided that the foregoing shall not prohibit any registered architect who has reviewed or supervised the preparation of drawings or other documents prepared by a registered interior designer from applying his or her seal to such drawings or other documents. (Code 1981, § 43-4-33, enacted by Ga. L. 1992, p. 3318, § 2; Ga. L. 2010, p. 748, § 4/HB 231.)

The 2010 amendment, effective June 2, 2010, deleted the former second sentence of subsection (a), which read: “The certificate shall have placed thereon the seal of the State Board of Architects.”; and in subsection (b), substituted “be authorized to have a seal separate from the seal of registered architects. The seal of a registered interior designer shall be applied

to drawing or other documents prepared by or under the responsible control of the registered interior designer” for “not be authorized to have a separate seal and the seal of the State Board of Architects shall not be applied to drawings or other documents prepared by registered interior designers” near the beginning.

43-4-34. Scope of practice; effect on practice of architecture and interior decoration.

(a) Nothing in this article shall be construed as amending or in any manner affecting the definition of or practice of architecture as provided in Code Sections 43-4-1 and 43-4-14.

(b) Nothing in this article shall be construed as prohibiting an architect from practicing interior design, provided that an architect shall not use the title “registered interior designer” unless the architect has been granted a certificate of registration under this article.

(c) Nothing in this article shall be construed as prohibiting or restricting the practice or activities of an interior decorator or individual offering interior decorating services, including, but not limited to, selection of surface materials, window treatments, wall coverings, paint, floor coverings, and lighting fixtures. (Code 1981, § 43-4-34, enacted by Ga. L. 1992, p. 3318, § 2.)

43-4-35. Applicability of provisions of Chapter 1 of this title.

For the purposes of this article, all the powers and duties provided in Chapter 1 of this title apply, including but not limited to the authority to sanction or deny registration as provided for applicants and licensees in Code Section 43-1-19. (Code 1981, § 43-4-35, enacted by Ga. L. 1992, p. 3318, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, “this title” was substituted for “Title 43”.

43-4-36. Registration of persons certified or registered in other states or foreign countries.

Any person who has been certified or registered as an interior designer in another state or foreign country may be issued a certificate of registration by the board to use the title "registered interior designer," provided that such person demonstrates to the satisfaction of the board that he meets the requirements for registration in this state. (Code 1981, § 43-4-36, enacted by Ga. L. 1992, p. 3318, § 2.)

43-4-37. Unlawful use of title "registered interior designer."

(a) It shall be unlawful for any person to use the title "registered interior designer" unless that person has been issued a certificate of registration as a registered interior designer as provided in this article.

(b) Any person violating the provisions of subsection (a) of this Code section shall be guilty of a misdemeanor. (Code 1981, § 43-4-37, enacted by Ga. L. 1992, p. 3318, § 2.)

CHAPTER 4A

ATHLETE AGENTS

Sec.		Sec.	
43-4A-1.	Short title.	43-4A-11.	Penalty for violation.
43-4A-2.	Definitions.	43-4A-12.	Surety bond requirement; suspension for failure to maintain.
43-4A-3.	Service of process agent for nonresident athlete agents.	43-4A-13.	Prohibited activities of athlete agent.
43-4A-4.	Certification of registration required; exception; agency contract void for noncompliance.	43-4A-14.	Notice of existence of contract to athletic director of educational institution.
43-4A-4.1.	Redesignated.	43-4A-15.	Requirements for agency contract; notice to student athlete; penalty for noncompliance; record for student athlete.
43-4A-5.	Application for registration.	43-4A-16.	Cancellation of contract by student athlete.
43-4A-6.	Issuance of certificate of registration; grounds for refusal to issue registration; application for renewal; two-year validity period for certificate.	43-4A-16.1.	Redesignated.
43-4A-7.	Discipline of registered agents; notice and hearing required.	43-4A-17.	Civil penalty.
43-4A-8.	Fee for registration or renewal.	43-4A-18.	Damages to educational institution; recovery.
43-4A-9.	Temporary registration.	43-4A-19.	Uniformity in application between states.
43-4A-10.	Required records; inspection by Secretary of State.	43-4A-20.	Electronic signatures.

Editor's notes. — Ga. L. 1990, p. 8, § 55, repealed Ga. L. 1988, p. 651, § 2, relating to the applicability of the Act to certain athletes.

Ga. L. 1990, p. 8, § 55, repealed Ga. L. 1989, p. 370, § 10A, which provided that this chapter should not apply to a person or agreement involving an athlete and an amateur athletic team.

Law reviews. — For survey article

discussing developments in law of business associations for the period from June 1, 1999, through May 31, 2000, see 52 Mercer L. Rev. 95 (2000).

For note on 2000 amendments of O.C.G.A. §§ 43-4A-7, 43-4A-11, 43-4A-16 and 2000 enactment of §§ 43-4A-16.1, 43-4A-20, see 17 Georgia St. U.L. Rev. 265 (2000).

OPINIONS OF THE ATTORNEY GENERAL

Limited applicability of provisions of chapter. — Legal entities and individuals who seek to obtain collegiate athletic scholarships for high school athletes do

not fall under the provisions of O.C.G.A. §§ 20-2-317 and 20-2-318, or the 2003 amendments to O.C.G.A. Ch. 4, T. 43. 2004 Op. Att'y Gen. No. U2004-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 27A Am. Jur. 2d, Entertainment and Sports Law, § 4 et seq.

43-4A-1. Short title.

This chapter shall be known and may be cited as the “Uniform Athlete Agents Act.” (Code 1981, § 43-4A-1, enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 2003, p. 774, § 1; Ga. L. 2010, p. 376, § 2/SB 149.)

Editor’s notes. — Ga. L. 2010, p. 376, § 2, effective July 1, 2010, reenacted this Code section without change.

43-4A-2. Definitions.

As used in this chapter, the term:

(1) “Agency contract” means an agreement in which a student athlete authorizes a person to negotiate or solicit on behalf of the student athlete a professional sports services contract or an endorsement contract.

(2) “Athlete agent” means an individual who enters into an agency contract with a student athlete or, directly or indirectly, recruits or solicits a student athlete to enter into an agency contract. This term includes an individual who represents to the public that the individual is an athlete agent. This term does not include a spouse, parent, sibling, grandparent, or guardian of the student athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

(3) “Athletic director” means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate.

(4) “Contact” means a communication, direct or indirect, between an athlete agent and a student athlete to recruit or solicit the student athlete to enter into an agency contract.

(5) “Endorsement contract” means an agreement under which a student athlete is employed or receives consideration to use on behalf of the other party any value that the student athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance.

(6) “Intercollegiate sport” means a sport played at the collegiate level for which eligibility requirements for participation by a student athlete are established by a national association for the promotion or regulation of collegiate athletics.

(7) “Person” means any individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint

venture, or government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(8) “Professional sports services contract” means an agreement under which an individual is employed, or agrees to render services, as a player on a professional sports team, with a professional sports organization, or as a professional athlete.

(9) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10) “Registration” means registration as an athlete agent pursuant to this chapter.

(11) “Secretary of State” means the Secretary of State of the State of Georgia and his or her designee.

(12) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(13) “Student athlete” means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student athlete for purposes of that sport. (Code 1981, § 43-4A-2, enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 1989, p. 370, § 1; Ga. L. 1993, p. 776, § 1; Ga. L. 2003, p. 774, § 2; Ga. L. 2010, p. 376, § 2/SB 149.)

The 2010 amendment, effective July 1, 2010, substituted “or the athletic program” for “and the athletic program” near the end of paragraph (3); deleted former paragraph (4), which read: “‘Commission’ means the Georgia Athlete Agent Regulatory Commission created in Code Section 43-4A-3.”; redesignated former para-

graphs (5) through (11) as present paragraphs (4) through (10), respectively; and added present paragraph (11).

Law reviews. — For note on 1989 amendment to this Code section, see 6 Georgia St. U.L. Rev. 298 (1989). For note on 1993 amendment of this Code section, see 10 Georgia St. U.L. Rev. 189 (1993).

43-4A-3. Service of process agent for nonresident athlete agents.

By acting as an athlete agent in this state, a nonresident individual appoints the Secretary of State as the individual’s agent for service of process in any civil action in this state related to the individual’s acting as an athlete agent in this state. (Code 1981, § 43-4A-4, enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 1989, p. 370, § 2; Ga. L. 1993, p. 776, § 2; Ga. L. 2003, p. 774, § 4; Code 1981, § 43-4A-3, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.)

The 2010 amendment, effective July 1, 2010, redesignated former Code Section 43-4A-4 as present Code Section 43-4A-3; and substituted "Secretary of State" for "division director of the professional licensing board" in the middle of this Code section.

Editor's notes. — This Code section formerly pertained to creation of the Georgia Athlete Agent Regulatory Commission, members, terms, removal, election of chairperson and vice chairperson, quo-

rum, rules and standards of conduct, reimbursement of members, and the role of the secretary. The former Code section was based on Code 1981, § 43-4A-3, enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2003, p. 774, § 3, and was repealed by Ga. L. 2010, p. 376, § 2, effective July 1, 2010.

Law reviews. — For note on 1989 amendment to this Code section, see 6 Georgia St. U.L. Rev. 298 (1989).

43-4A-4. Certification of registration required; exception; agency contract void for noncompliance.

(a) Except as otherwise provided in subsection (b) of this Code section, an individual shall not act as an athlete agent in this state without holding a certificate of registration under this chapter.

(b) Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes, except signing an agency contract, if:

(1) A student athlete or another person acting on behalf of the student athlete initiates communication with the individual; and

(2) Within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state.

(c) An agency contract resulting from conduct in violation of this Code section shall be void, and the athlete agent shall return any consideration received under the contract. (Code 1981, § 43-4A-4.1, enacted by Ga. L. 2003, p. 774, § 5; Code 1981, § 43-4A-4, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.)

The 2010 amendment, effective July 1, 2010, redesignated former Code Section 43-4A-4.1 as present Code Section 43-4A-4; substituted "shall not" for "may not" in the middle of subsection (a); and substituted "shall be void," for "is void" near the middle of subsection (c).

Editor's notes. — Ga. L. 2010, p. 376, § 2, effective July 1, 2010, redesignated former Code Section 43-4A-4 as present Code Section 43-4A-3.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Offense arising from a violation of O.C.G.A. § 43-4A-4 does not appear to be an offense

for which fingerprinting is required. 2010 Op. Att'y Gen. No. 10-6.

43-4A-4.1. Redesignated.

Editor's notes. — Ga. L. 2010, p. 376, former Code Section 43-4A-4.1 as present § 2, effective July 1, 2010, redesignated Code Section 43-4A-4.

43-4A-5. Application for registration.

An applicant for registration shall submit an application for registration to the Secretary of State in a form prescribed by the Secretary of State. An application filed under this Code section is a public record. The application shall be in the name of an individual and state or contain the following and any other information required by the Secretary of State:

- (1) The name of the applicant and the address of the applicant's residence and principal place of business;
- (2) The name of the applicant's business or employer, if applicable;
- (3) Any business or occupation engaged in by the applicant for the five years next preceding the date of submission of the application;
- (4) A description of the applicant's:
 - (A) Formal training as an athlete agent;
 - (B) Practical experience as an athlete agent; and
 - (C) Educational background relating to the applicant's activities as an athlete agent;
- (5) The names and addresses of three individuals not related to the applicant who are willing to serve as references;
- (6) The name, sport, and last known team for each individual for whom the applicant acted as an athlete agent during the five years next preceding the date of submission of the application;
- (7) The names and addresses of all persons who are:
 - (A) With respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit sharers of the business; and
 - (B) With respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of 5 percent or greater;
- (8) Whether the applicant or any person named pursuant to paragraph (7) of this Code section has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;

(9) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to paragraph (7) of this Code section has made a false, misleading, deceptive, or fraudulent representation;

(10) Any instance in which the conduct of the applicant or any person named pursuant to paragraph (7) of this Code section resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student athlete or educational institution;

(11) Any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to paragraph (7) of this Code section arising out of occupational or professional conduct; and

(12) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew the registration or licensure of the applicant or any person named pursuant to paragraph (7) of this Code section as an athlete agent in any state. (Code 1981, § 43-4A-5, enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 1989, p. 370, § 3; Ga. L. 1993, p. 123, § 20; Ga. L. 2003, p. 774, § 6; Ga. L. 2010, p. 376, § 2/SB 149.)

The 2010 amendment, effective July 1, 2010, in the introductory paragraph, substituted "Secretary of State" for "commission" three times and substituted "application shall" for "application must" near the beginning of the last sentence.

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 2003, "Code section" was substituted for "subsection" in paragraph (8).

Law reviews. — For note on 1989 amendment to O.C.G.A. § 43-4A-5, see 6 Georgia St. U.L. Rev. 298 (1989).

43-4A-6. Issuance of certificate of registration; grounds for refusal to issue registration; application for renewal; two-year validity period for certificate.

(a) Except as otherwise provided in subsection (b) of this Code section, the Secretary of State shall issue a certificate of registration to an individual who complies with Code Section 43-4A-5.

(b) The Secretary of State may refuse to issue a certificate of registration if it is determined that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the Secretary of State may consider whether the applicant has:

(1) Been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;

(2) Made a material false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent;

(3) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;

(4) Engaged in conduct prohibited by this chapter;

(5) Had a registration or licensure as an athlete agent suspended, revoked, or denied or been refused renewal of registration or licensure as an athlete agent in any state;

(6) Engaged in conduct the consequence of which was that a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student athlete or educational institution; or

(7) Engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.

(c) In making a determination under subsection (b) of this Code section, the Secretary of State shall consider:

(1) How recently the conduct occurred;

(2) The nature of the conduct and the context in which it occurred; and

(3) Any other relevant conduct of the applicant.

(d) The refusal to grant a registration shall not be considered to be a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Notice and hearing within the meaning of such chapter shall not be required. Notice of refusal to grant a registration shall be sent by registered mail or statutory overnight delivery or personal service setting forth the particular reasons for the refusal. The written notice shall be sent to the applicant's address of record with the Secretary of State, and the applicant shall be allowed to appear before the Secretary of State if the applicant requests to do so in writing.

(e) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the Secretary of State. An application filed under this subsection is a public record.

(f) A certificate of registration or a renewal of a registration shall be valid for a period of up to two years. (Code 1981, § 43-4A-7, enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 1989, p. 370, § 4; Ga. L. 2000, p. 1396, § 1; Ga. L. 2000, p. 1589, § 4; Ga. L. 2003, p. 774, § 8; Code 1981, § 43-4A-6, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.)

The 2010 amendment, effective July 1, 2010, redesignated former Code Section 43-4A-7 as present Code Section 43-4A-6; added subsection (a); redesignated former

subsections (a) through (e) as present subsections (b) through (f), respectively; substituted "Secretary of State" for "commission" throughout this Code section;

substituted "it is determined" for "the commission determines" in the middle of the first sentence of present subsection (b); substituted "subsection (b)" for "subsection (a)" in the middle of present subsection (c); and substituted "shall be valid" for "is valid" in the middle of present subsection (f).

Editor's notes. — Ga. L. 2000, p. 1396, § 6, not codified by the General Assembly, provides that the amendment to this Code section is applicable to acts occurring on or after July 1, 2000.

Ga. L. 2000, p. 1589, § 16, not codified

by the General Assembly, provides that the amendment to subsection (d) is applicable with respect to notices delivered on or after July 1, 2000.

This Code section formerly pertained to evaluation and investigation of applicant. The former Code section was based on Code 1981, § 43-4A-6, enacted by Ga. L. 1988, p. 651, § 1, and was repealed and reserved by Ga. L. 2003, p. 774, § 7, effective June 4, 2003.

Law reviews. — For note on 1989 amendment to this Code section, see 6 Georgia St. U.L. Rev. 298 (1989).

43-4A-7. Discipline of registered agents; notice and hearing required.

(a) The Secretary of State may suspend, revoke, or refuse to renew a registration or may discipline a person registered by the Secretary of State for conduct that would have justified denial of registration under Code Section 43-4A-6.

(b) The Secretary of State may discipline, suspend, revoke, or refuse to renew a certificate of registration only after proper notice and an opportunity for a hearing.

(c) The provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," shall be applicable to the Secretary of State and the provisions of this chapter. (Code 1981, § 43-4A-8, enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 1989, p. 370, § 5; Ga. L. 2003, p. 774, § 9; Ga. L. 2005, p. 60, § 43/HB 95; Code 1981, § 43-4A-7, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.)

The 2010 amendment, effective July 1, 2010, redesignated former Code Section 43-4A-8 as present Code Section 43-4A-7; substituted "Secretary of State" for "commission" throughout this Code section; and substituted "Code Section 43-4A-6" for "Code Section 43-4A-7" at the end of subsection (a).

Editor's notes. — Ga. L. 2010, p. 376, § 2, effective July 1, 2010, redesignated former Code Section 43-4A-7 as present Code Section 43-4A-6.

Law reviews. — For note on 1989 amendment to this Code section, see 6 Georgia St. U.L. Rev. 298 (1989).

43-4A-8. Fee for registration or renewal.

An application for registration or renewal of registration shall be accompanied by such fee as shall be prescribed by the Secretary of State and a renewal bond, if applicable. The fee shall be the same for all applicants regardless of previous or current registrations or licenses in other states or jurisdictions as an athlete agent. (Code 1981, § 43-4A-9,

enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 2003, p. 774, § 10; Code 1981, § 43-4A-8, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.)

The 2010 amendment, effective July 1, 2010, redesignated former Code Section 43-4A-9 as present Code Section 43-4A-8; and, in the first sentence, substituted “shall be accompanied” for “must be accompanied” and substituted “Secretary of State” for “commission”.

Editor’s notes. — Ga. L. 2010, p. 376, § 2, effective July 1, 2010, redesignated former Code Section 43-4A-8 as present Code Section 43-4A-7.

43-4A-9. Temporary registration.

The Secretary of State may issue a temporary certificate of registration while an application for registration or renewal of registration is pending, upon receipt by the Secretary of State of a completed application for registration, surety bond, and fee and after approval by the Secretary of State. The Secretary of State may in his or her discretion issue a temporary registration to the applicant, which registration shall have the same force and effect as a permanent registration for such period of time prescribed by the Secretary of State, after which the temporary registration shall become void. A temporary registration may be voided by the Secretary of State at any time. (Code 1981, § 43-4A-10, enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 1989, p. 370, § 6; Ga. L. 1993, p. 776, § 3; Ga. L. 2000, p. 1706, § 19; Ga. L. 2003, p. 774, § 11; Code 1981, § 43-4A-9, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.)

The 2010 amendment, effective July 1, 2010, redesignated former Code Section 43-4A-10 as present Code Section 43-4A-9; substituted “Secretary of State” for “commission” throughout this Code section; substituted “Secretary of State” for “chairperson of the commission” at the end of the first sentence; in the second sentence, substituted “Secretary of State” for “division director” and substituted “for such period of time prescribed by the Secretary of State, after which” for “until

the next regular meeting of the commission when” near the middle; and inserted “by the Secretary of State” in the last sentence.

Editor’s notes. — Ga. L. 2010, p. 376, § 2, effective July 1, 2010, redesignated former Code Section 43-4A-9 as present Code Section 43-4A-8.

Law reviews. — For note on 1989 amendment to this Code section, see 6 Georgia St. U.L. Rev. 298 (1989).

43-4A-10. Required records; inspection by Secretary of State.

(a) An athlete agent shall retain the following records for a period of five years:

- (1) The name and address of each individual represented by the athlete agent;
- (2) Any agency contract entered into by the athlete agent; and

(3) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student athlete to enter into an agency contract.

(b) Records required by subsection (a) of this Code section to be retained shall be open to inspection by the Secretary of State during normal business hours. (Code 1981, § 43-4A-11, enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 1989, p. 370, § 7; Ga. L. 2000, p. 1396, § 2; Ga. L. 2003, p. 774, § 12; Code 1981, § 43-4A-10, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.)

The 2010 amendment, effective July 1, 2010, redesignated former Code Section 43-4A-11 as present Code Section 43-4A-10; and, in the middle of subsection (b), substituted “shall be open to inspection by the Secretary of State” for “are open to inspection by the commission”.

Editor’s notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to sub-

section (a) is applicable with respect to notices delivered on or after July 1, 2000.

Ga. L. 2010, p. 376, § 2, effective July 1, 2010, redesignated former Code Section 43-4A-10 as present Code Section 43-4A-9.

Law reviews. — For note on 1989 amendment to this Code section, see 6 Georgia St. U.L. Rev. 298 (1989).

43-4A-11. Penalty for violation.

An athlete agent who violates Code Section 43-4A-14 shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than \$5,000.00 nor more than \$100,000.00, by imprisonment of one to five years, or both such fine and imprisonment. (Code 1981, § 43-4A-12, enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 1989, p. 370, § 8; Ga. L. 2003, p. 774, § 13; Code 1981, § 43-4A-11, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.)

The 2010 amendment, effective July 1, 2010, redesignated former Code Section 43-4A-12 as present Code Section 43-4A-11; and substituted “Code Section 43-4A-14” for “Code Section 43-4A-16” near the beginning of this Code section.

Editor’s notes. — Ga. L. 2010, p. 376,

§ 2, effective July 1, 2010, redesignated former Code Section 43-4A-11 as present Code Section 43-4A-10.

Law reviews. — For note on 1989 amendment to this Code section, see 6 Georgia St. U.L. Rev. 298 (1989).

43-4A-12. Surety bond requirement; suspension for failure to maintain.

(a) An athlete agent shall deposit or have deposited with the Secretary of State, prior to the issuance of a registration or renewal of a registration, a surety bond in the penal sum of not less than \$10,000.00, as established by the Secretary of State. Such surety bond shall be executed in the favor of the state with a surety company authorized to do business in this state and conditioned to pay damages in the amount of such bond to any athletic department aggrieved by any act of the

principal named in such bond, which act is in violation of Code Section 43-4A-13 or would be grounds for revocation of a license under this chapter. If more than one athletic department suffers damages by the actions of an athlete agent, each athletic department shall receive a pro rata share of the amount of the bond based on the entitlement of one share of such amount of the bond for each student athlete who loses his or her eligibility to participate in intercollegiate sports contests as a member of a sports team at an institution of higher education as a result of actions of the athlete agent.

(b) If any registrant fails to maintain such bond so as to comply with the provisions of this Code section, the registration issued to the athlete agent shall be suspended until such time as a new bond is obtained. An athlete agent whose registration is suspended pursuant to this Code section shall not carry on any business as an athlete agent during the period of suspension. (Code 1981, § 43-4A-13, enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 1989, p. 370, § 9; Ga. L. 2003, p. 774, § 14; Code 1981, § 43-4A-12, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.)

The 2010 amendment, effective July 1, 2010, redesignated former Code Section 43-4A-13 as present Code Section 43-4A-12; and, in subsection (a), substituted “Secretary of State” for “commission” twice in the first sentence and substituted “Code Section 43-4A-13” for “Code Section 43-4A-14” in the second sentence.

Editor’s notes. — Ga. L. 2010, p. 376, § 2, effective July 1, 2010, redesignated former Code Section 43-4A-12 as present Code Section 43-4A-11.

Law reviews. — For note on 1989 amendment to this Code section, see 6 Georgia St. U.L. Rev. 298 (1989).

43-4A-13. Prohibited activities of athlete agent.

(a) An athlete agent shall not, with the intent to induce a student athlete to enter into an agency contract:

(1) Give any materially false or misleading information or make a materially false promise or representation;

(2) Furnish anything of value to a student athlete before the student athlete enters into the agency contract; or

(3) Furnish anything of value to an individual other than the student athlete or another registered athlete agent.

(b) An athlete agent shall not intentionally:

(1) Initiate contact with a student athlete unless registered under this chapter;

(2) Refuse or fail to retain or permit inspection of the records required to be retained by this chapter;

(3) Fail to register when required by this chapter;

(4) Provide materially false or misleading information in an application for registration or renewal of registration;

(5) Predate or postdate an agency contract; or

(6) Fail to notify a student athlete before the student athlete signs or otherwise authenticates an agency contract for a particular sport that such signing or authentication may make the student athlete ineligible to participate as a student athlete in that sport. (Code 1981, § 43-4A-14, enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 2003, p. 774, § 15; Code 1981, § 43-4A-13, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.)

The 2010 amendment, effective July 1, 2010, redesignated former Code Section 43-4A-14 as present Code Section 43-4A-13; and substituted “shall not” for “may not” in the introductory paragraph of subsection (b).

Editor’s notes. — Ga. L. 2010, p. 376, § 2, effective July 1, 2010, redesignated former Code Section 43-4A-13 as present Code Section 43-4A-12.

43-4A-14. Notice of existence of contract to athletic director of educational institution.

(a) Within 72 hours after entering into an agency contract or before the next scheduled athletic event in which the student athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student athlete is enrolled or the athlete agent has reasonable grounds to believe the student athlete intends to enroll.

(b) Within 72 hours after entering into an agency contract or before the next scheduled athletic event in which the student athlete may participate, whichever occurs first, the student athlete shall inform the athletic director of the educational institution at which the student athlete is enrolled that he or she has entered into an agency contract. (Code 1981, § 43-4A-16, enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 1989, p. 370, § 10; Ga. L. 2000, p. 1396, § 3; Ga. L. 2003, p. 774, § 17; Code 1981, § 43-4A-14, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.)

The 2010 amendment, effective July 1, 2010, redesignated former Code Section 43-4A-16 as present Code Section 43-4A-14.

Editor’s notes. — Ga. L. 2000, p. 1396, § 6, not codified by the General Assembly, provides that the amendment to this Code section is applicable to acts occurring on or after July 1, 2000.

Ga. L. 2010, p. 376, § 2, effective July 1, 2010, redesignated former Code Section 43-4A-14 as present Code Section 43-4A-13.

Law reviews. — For note on 1989 amendment to this Code section, see 6 Georgia St. U.L. Rev. 298 (1989).

43-4A-15. Requirements for agency contract; notice to student athlete; penalty for noncompliance; record for student athlete.

(a) An agency contract shall be in a record that is signed or otherwise authenticated by the parties.

(b) An agency contract shall state or contain:

(1) The amount and method of calculating the consideration to be paid by the student athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;

(2) The name of any person not listed in the application for registration or renewal of registration who will be compensated because the student athlete signed the agency contract;

(3) A description of any expenses that the student athlete agrees to reimburse;

(4) A description of the services to be provided to the student athlete;

(5) The duration of the contract; and

(6) The date of execution.

(c) An agency contract shall contain, in close proximity to the signature of the student athlete, a conspicuous notice in boldface type in capital letters stating:

“WARNING TO STUDENT ATHLETE IF YOU SIGN THIS CONTRACT:

(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT ATHLETE IN YOUR SPORT;

(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND

(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.”

(d) An agency contract that does not conform to this Code section shall be voidable by the student athlete. If a student athlete voids an agency contract, the student athlete shall not be required to pay any consideration under the contract or to return any consideration re-

ceived from the athlete agent to induce the student athlete to enter into the contract.

(e) The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student athlete at the time of execution. (Code 1981, § 43-4A-16.1, enacted by Ga. L. 2000, p. 1396, § 4; Ga. L. 2003, p. 774, § 18; Code 1981, § 43-4A-15, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.)

The 2010 amendment, effective July 1, 2010, redesignated former Code Section 43-4A-16.1 as present Code Section 43-4A-15; substituted “shall” for “must” near the beginning of subsections (a) through (c); and, in subsection (d), substituted “shall be voidable” for “is voidable” in the first sentence and substituted “shall not be required” for “is not required” in the middle of the second sentence.

Editor’s notes. — Ga. L. 2000, p. 1396, § 6, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to acts occurring on or after July 1, 2000.

Ga. L. 2010, p. 376, § 2, effective July 1, 2010, redesignated former Code Section 43-4A-15 as present Code Section 43-4A-17.

43-4A-16. Cancellation of contract by student athlete.

(a) A student athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within 14 days after the contract is signed.

(b) A student athlete shall not waive the right to cancel an agency contract.

(c) If a student athlete cancels an agency contract, the student athlete shall not be required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student athlete to enter into the contract. (Code 1981, § 43-4A-17, enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 2003, p. 774, § 19; Code 1981, § 43-4A-16, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.)

The 2010 amendment, effective July 1, 2010, redesignated former Code Section 43-4A-17 as present Code Section 43-4A-16; substituted “shall not waive” for “may not waive” in the middle of subsection (b); and substituted “shall not be

required” for “is not required” near the middle of subsection (c).

Editor’s notes. — Ga. L. 2010, p. 376, § 2, effective July 1, 2010, redesignated former Code Section 43-4A-16 as present Code Section 43-4A-14.

43-4A-16.1. Redesignated.

Editor’s notes. — Ga. L. 2010, p. 376, § 2, effective July 1, 2010, redesignated

former Code Section 43-4A-16.1 as present Code Section 43-4A-15.

43-4A-17. Civil penalty.

The Secretary of State may assess a civil penalty against an athlete agent not to exceed \$25,000.00 for a violation of this chapter. (Code 1981, § 43-4A-15, enacted by Ga. L. 1988, p. 651, § 1; Ga. L. 2003, p. 774, § 16; Code 1981, § 43-4A-17, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.)

The 2010 amendment, effective July 1, 2010, redesignated former Code Section 43-4A-15 as present Code Section 43-4A-17; and substituted “Secretary of State” for “commission” at the beginning of this Code section.

Editor’s notes. — Ga. L. 2010, p. 376, § 2, effective July 1, 2010, redesignated former Code Section 43-4A-17 as present Code Section 43-4A-16.

43-4A-18. Damages to educational institution; recovery.

(a) An educational institution has a right of action against an athlete agent or former student athlete for damages caused by a violation of this chapter. In an action under this Code section, the court may award to the prevailing party costs and reasonable attorney’s fees.

(b) Damages to an educational institution under subsection (a) of this Code section include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student athlete, the educational institution was injured by a violation of this chapter or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.

(c) A right of action under this Code section shall not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent or former student athlete.

(d) Any liability of the athlete agent or the former student athlete under this Code section shall be several and not joint.

(e) This chapter shall not restrict rights, remedies, or defenses of any person under law or equity. (Code 1981, § 43-4A-20, enacted by Ga. L. 2000, p. 1396, § 5; Ga. L. 2003, p. 774, § 22; Code 1981, § 43-4A-18, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.)

The 2010 amendment, effective July 1, 2010, redesignated former Code Section 43-4A-20 as present Code Section 43-4A-18; substituted “shall not” for “does not” near the beginning of subsections (c)

and (e); and substituted “shall be several” for “is several” near the end of subsection (d).

Editor’s notes. — Ga. L. 2000, p. 1396, § 6, not codified by the General Assembly,

provides that this Code section is applicable to acts occurring on or after July 1, 2000.

Ga. L. 2010, p. 376, § 2, effective July 1,

2010, redesignated former Code Section 43-4A-18 as present Code Section 43-4A-19.

43-4A-19. Uniformity in application between states.

In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. (Code 1981, § 43-4A-18, enacted by Ga. L. 2003, p. 774, § 20; Code 1981, § 43-4A-19, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.)

The 2010 amendment, effective July 1, 2010, redesignated former Code Section 43-4A-18 as present Code Section 43-4A-19; and substituted “shall be given” for “must be given” in this Code section.

Editor’s notes. — Ga. L. 1992, p. 3137, § 4, effective July 1, 1992, repealed former

Code Section 43-4A-18, which was based on Ga. L. 1988, p. 651, § 1, relating to termination.

Ga. L. 2010, p. 376, § 2, effective July 1, 2010, redesignated former Code Section 43-4A-19 as present Code Section 43-4A-20.

43-4A-20. Electronic signatures.

The provisions of this chapter governing the legal effect, validity, or enforceability of electronic records or signatures and of contracts formed or performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), and supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act. (Code 1981, § 43-4A-19, enacted by Ga. L. 1990, p. 8, § 43; Ga. L. 2003, p. 774, § 21; Code 1981, § 43-4A-20, as redesignated by Ga. L. 2010, p. 376, § 2/SB 149.)

The 2010 amendment, effective July 1, 2010, redesignated former Code Section 43-4A-19 as present Code Section 43-4A-20.

Editor’s notes. — Ga. L. 2010, p. 376, § 2, effective July 1, 2010, redesignated former Code Section 43-4A-20 as present Code Section 43-4A-18.

CHAPTER 4B

GEORGIA ATHLETIC AND ENTERTAINMENT
COMMISSION

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43-4B-55. Exemptions.

Administrative rules and regulations. — Boxing regulations, Official Compilation of the Rules and Regulations

of the State of Georgia, Georgia Athletic and Entertainment Commission, Chapter 85-1.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the provisions, opinions under former Code 1933, §§ 13-1801 and 13-1802 are included in the annotations for this Code section.

Scope of commission's authority. — State Boxing Commission has authority to require licensure of professional boxing promoters; but the Commission does not have authority to license other participants, establish ring and equipment re-

quirements and standards, or establishing safety and conduct of bout standards by rule or regulation. 1984 Op. Att'y Gen. No. 84-10 (decided prior to 1984 amendment of O.C.G.A. § 31-31-2).

Ultimate fighting matches that encompass boxing, kick boxing, or contact karate were subject to former O.C.G.A. Ch. 31, T. 31. 1996 Op. Att'y Gen. No. 96-21 (decided under former O.C.G.A. Ch. 31, T. 31).

RESEARCH REFERENCES

Am. Jur. 2d. — 27A Am. Jur. 2d, Entertainment and Sports, § 1 et seq.

ARTICLE 1

GENERAL PROVISIONS

43-4B-1. Definitions.

As used in this chapter, the term:

(1) "Amateur," when applied to a person engaged in boxing, wrestling, or a martial art, means a person who receives no compensation and engages in a match, contest, or exhibition of boxing, wrestling, or a martial art that is governed or authorized by:

- (A) U.S.A. Boxing;
- (B) The Georgia High School Athletic Association;
- (C) The National Collegiate Athletic Association;
- (D) Amateur Athletic Union;
- (E) Golden Gloves;
- (F) Team Georgia Amateur Wrestling;

- (G) USA Wrestling;
- (H) National High School Coaches Association;
- (I) North American Sport Karate Association;
- (J) International Sport Kick Boxing/Karate Association;
- (K) World Kick Boxing Association;
- (L) United States Kick Boxing Association;
- (M) International Sport Combat Federation;
- (N) Professional Karate Commission;
- (O) International Kick Boxing Federation; or
- (P) The local affiliate of any organization listed in this paragraph.

(2) "Boxing match" means a contest between two individuals in which contestants score points in rounds of two or three minutes by striking with padded fists the head and upper torso of the opponent or by knocking the opponent down and rendering the opponent unconscious or incapable of continuing the contest by such blows, which contest is held in a square ring supervised by a referee and scored by three judges.

(3) "Boxing registry" means a registry created or designated pursuant to subsection (j) of Code Section 43-4B-4.

(3.1) "Charitable organization" means an entity described by:

(A) Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)); or

(B) Section 170(c), Internal Revenue Code of 1986 (26 U.S.C. Section 170(c)).

(4) "Commission" means the Georgia Athletic and Entertainment Commission.

(5) "Exhibition" means a contest where the participants engage in the use of boxing, wrestling, or martial arts skills and techniques and where the objective is to display such skills and techniques without striving to win.

(6) "Face value" means the dollar value of a ticket or order, which value shall reflect the dollar amount that the customer is required to pay or, for complimentary tickets, would have been required to pay to purchase a ticket with equivalent seating priority in order to view the match, contest, exhibition, or entertainment event. A complimentary ticket shall not have a face value of \$0.00. A complimentary ticket

shall not have a face value of less than that of the least expensive ticket available for sale to the general public. Face value shall include any charges or fees, such as dinner, gratuity, parking, surcharges, or any other charges or fees which are charged to and must be paid by the customer in order to view the match, contest, exhibition, or entertainment event. It shall exclude any portion paid by the customer for federal, state, or local taxes.

(7) "Gross proceeds" means the total revenue received solely from the sale of tickets used or intended to be used by the audience physically attending any event required to be licensed under this chapter.

(8) "Gross receipts" means:

(A) The gross price charged for the sale or lease of broadcasting, television, pay per view, closed circuit, or motion picture rights without any deductions for commissions, brokerage fees, distribution fees, production fees, advertising, or other expenses or charges;

(B) The face value of all tickets sold and complimentary tickets issued, provided, or given; and

(C) The face value of any seats issued, provided, or given in exchange for advertising, sponsorships, or anything of value to the promotion of an event.

(9) "Local tax" means any occupation tax or other tax owed to a county or municipality in order to hold a match, contest, or exhibition or to carry on a business as a ticket broker within such county or municipality.

(9.1) "Kickboxing" means unarmed combat involving the use of striking techniques delivered with the upper and lower body and in which the competitors remain standing while striking.

(10) "Manager" means a person who under contract, agreement, or other arrangement with a boxer, undertakes to control or administer, directly or indirectly, a matter related to boxing on behalf of a boxer. Such term includes, but is not limited to, a person who functions as a booking agent, adviser, or consultant.

(10.1) "Martial art" means any form of unarmed combative sport or unarmed combative entertainment that allows contact striking, except boxing or wrestling.

(10.2) "Matchmaker" means a person who is employed by or associated with a promoter in the capacity of booking and arranging professional matches, contests, or exhibitions between opponents or who proposes professional matches, contests, or exhibitions and

selects and arranges for the participants in such events and for whose activities in this regard the promoter is legally responsible.

(11) “Mixed martial arts” means unarmed combat involving the use of a combination of techniques from different disciplines of the martial arts, including but not limited to grappling, submission holds, and strikes with the upper and lower body.

(11.1) “Original purchaser for personal use” means a person who buys one or more tickets with the intention of using the ticket or tickets solely for the use of the purchaser or the purchaser’s invitees, employees, and agents. An original purchaser who resells more than six tickets to the same athletic contest or entertainment event and who resells tickets to an athletic contest or entertainment event for more than 105 percent of their face value shall be rebuttably presumed to be engaging in the business of a ticket broker in any criminal prosecution or civil action, order, or penalty by the commission.

(11.2) “Patron boxing,” “patron wrestling,” or “patron martial arts” means boxing, wrestling, or martial arts that is not:

(A) Governed or authorized by any organization listed in paragraph (1) of this Code section;

(B) Governed or authorized by an organization licensed by the commission in accordance with this chapter;

(C) Governed or authorized by an organization exempted from licensure by the commission in accordance with this chapter; and

(D) Licensed by the commission in accordance with Article 2 of this chapter.

(11.3) “Pay per view” means a telecast for which a fee is required in addition to any other fee paid by the viewer for any other services of the telecaster.

(12) “Person” means any individual, partnership, firm, association, corporation, or combination of individuals of whatever form or character.

(13) “Physician” means a doctor of medicine or other medical professional legally authorized by any state to practice medicine.

(14) “Professional” means a person who is participating or has participated in a match, contest, or exhibition which is not governed or authorized by one or more of the organizations listed in paragraph (1) of this Code section and:

(A) Has received or competed for or is receiving or competing for any cash as a salary, purse, or prize for participating in any match, contest, or exhibition;

(B) Is participating or has participated in any match, contest, or exhibition to which admission is granted upon payment of any ticket for admission or other evidence of the right of entry;

(C) Is participating or has participated in any match, contest, or exhibition which is or was filmed, broadcast, or transmitted for viewing; or

(D) Is participating or has participated in any match, contest, or exhibition which provides a commercial advantage by attracting persons to a particular place or promoting a commercial product or enterprise.

(15) "Professional match, contest, or exhibition" means a match, contest, or exhibition which is not governed or authorized by one or more of the organizations listed in paragraph (1) of this Code section and:

(A) Rewards a participant with cash as a salary, purse, or prize for such participation;

(B) Requires for admission payment of a ticket for admission or other evidence of the right of entry;

(C) Is filmed, broadcast, or transmitted for viewing; or

(D) Provides a commercial advantage by attracting persons to a particular place or promoting a commercial product or enterprise.

(16) "Promoter" means the person primarily responsible for organizing, promoting, and producing a professional match, contest, or exhibition and who is legally responsible for the lawful conduct of such professional match, contest, or exhibition.

(16.1) "Promotion of unarmed combat" means the organization, promotion, production, publicizing, or arranging of, or provision of a venue for, a competition of unarmed combat by a person who receives some compensation or commercial benefit from such competition.

(17) "Purse" or "ring earnings" means the financial guarantee or any other remuneration, or part thereof, for which professional boxers or wrestlers are participating in a match, contest, or exhibition and includes the boxer's or wrestler's share of any payment received for radio broadcasting, television, or motion picture rights.

(17.1) "Shidokan" means unarmed combat involving three separate, segregated rounds in which karate rules and techniques are exclusively used in one round, kickboxing rules and techniques are exclusively used in one round, and grappling rules and techniques are exclusively used in one round.

(18) "State" means any of the 50 states, Puerto Rico, the District of Columbia, and any territory or possession of the United States.

(19) "Ticket broker" means:

(A) Any person who is involved in the business of reselling tickets of admission to athletic contests, concerts, theater performances, amusements, exhibitions, or other entertainment events held in this state to which the general public is admitted and who charges a premium in excess of the price of the ticket; or

(B) Any person who has a permanent office or place of business in this state who is involved in the business of reselling tickets of admission to athletic contests, concerts, theater performances, amusements, exhibitions, or other entertainment events held inside or outside this state to which the general public is admitted and who charges a premium in excess of the price of the ticket.

The term ticket broker shall not include the owner, operator, lessee, or tenant of the property in which an athletic contest or entertainment event is being held or the sponsor of such a contest or event or the authorized ticket agent of such persons.

(20)(A) "Unarmed combat" means any form of competition between human beings or one or more human beings and one or more animals in which:

(i) One or more blows are struck which may reasonably be expected to inflict injury on a human being; and

(ii) There is some compensation or commercial benefit arising from such competition, whether in the form of cash or noncash payment to the competitors or the person arranging the competition; the sale of the right to film, broadcast, transmit, or view the competition; or the use of the competition to attract persons to a particular location for some commercial advantage or to promote a commercial product or commercial enterprise.

Such term also means any amateur kickboxing match in which the competitors are not wearing protective gear.

(B) Unarmed combat shall include but shall not be limited to: tough man fights, bad man fights, nude boxing, nude wrestling, patron boxing, patron martial arts, and patron wrestling.

(C) Unarmed combat shall not include:

(i) Professional boxing licensed in accordance with this chapter;

(ii) Professional wrestling governed or authorized by an organization licensed or exempted from licensure in accordance with this chapter;

(iii) Amateur boxing governed or authorized by an organization listed in paragraph (1) of this Code section;

(iv) Amateur wrestling governed or authorized by an organization listed in paragraph (1) of this Code section;

(v) Any competition displaying the skills of a single form of an Oriental system of unarmed combative sports or unarmed combative entertainment, including, but not limited to, kickboxing, karate, or full-contact karate, that is held pursuant to the rules of that form and governed or authorized by an organization licensed by the commission in accordance with Article 4 of this chapter;

(vi) Shidokan when the competition is governed or authorized by an organization licensed by the commission in accordance with Article 4 of this chapter;

(vii) Mixed martial arts fighting when the competition is governed or authorized by an organization licensed by the commission in accordance with Article 4 of this chapter; or

(viii) Other martial arts competitions, when governed or authorized by an organization licensed by the commission in accordance with Article 4 of this chapter.

(21) “Wrestling” means:

(A) A staged performance of fighting and gymnastic skills and techniques by two or more human beings who are not required to use their best efforts in order to win and for which the winner may have been selected before the performance commences; or

(B) A performance of fighting and gymnastic skills and techniques by two or more human beings. (Code 1981, § 43-4B-1, enacted by Ga. L. 2001, p. 752, § 2; Ga. L. 2003, p. 774, §§ 23, 24; Ga. L. 2005, p. 984, § 1/SB 224; Ga. L. 2011, p. 752, § 43/HB 142.)

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, revised language in subparagraph (1)(A).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, former paragraph (10.2) was redesignated as present paragraph (11) and former paragraph (11) was redesignated as present paragraph (10.2); in paragraph (17.1), “in which” was substituted for “of which” near

the beginning; in division (20)(C)(v), “kickboxing” was substituted for “kick boxing” near the middle; and, in division (20)(C)(vi), “or” was deleted from the end.

Administrative rules and regulations. — Boxing regulations, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Athletic and Entertainment Commission, Chapter 85-1.

43-4B-2. Application.

(a) The provisions of this chapter shall not be construed to apply to any match, contest, or exhibition:

- (1) In which the contestants are all amateurs; and
- (2) Which is governed or authorized by:
 - (A) U.S.A. Boxing;
 - (B) The Georgia High School Athletic Association;
 - (C) The National Collegiate Athletic Association;
 - (D) Amateur Athletic Union;
 - (E) Golden Gloves;
 - (F) Team Georgia Amateur Wrestling;
 - (G) USA Wrestling;
 - (H) National High School Coaches Association;
 - (I) North American Sport Karate Association;
 - (J) International Sport Kick Boxing/Karate Association;
 - (K) World Kick Boxing Association;
 - (L) United States Kick Boxing Association;
 - (M) International Sport Combat Federation;
 - (N) Professional Karate Commission;
 - (O) International Kick Boxing Federation; or
 - (P) The local affiliate of any organization listed in this paragraph.

(b) The provisions of this chapter shall not apply to any matches, contests, or exhibitions of professional wrestling or to a promoter or organization that promotes, organizes, or governs such matches, contests, or exhibitions where such promoter or organization is a corporation that, at the time of such matches, contests, or exhibitions:

- (1) Is registered under the federal Securities Exchange Act of 1934; and
- (2) Has total assets of not less than \$25 million. (Code 1981, § 43-4B-2, enacted by Ga. L. 2001, p. 752, § 2; Ga. L. 2005, p. 984, § 2/SB 224; Ga. L. 2011, p. 752, § 43/HB 142.)

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted “\$25 million” for “\$25,000,000.00” in paragraph (b)(2).

43-4B-3. Georgia Athletic and Entertainment Commission; membership; medical advisory panel; reimbursement of members.

(a) The State Boxing Commission in existence immediately prior to July 1, 2001, is continued in existence subject to the provisions of this chapter. On and after July 1, 2001, the name of such commission shall be the Georgia Athletic and Entertainment Commission. The membership of the commission shall continue unchanged except as otherwise expressly provided by this chapter.

(b) The commission shall be composed of five members appointed by the Governor. Each member of the commission shall be appointed for a term of four years and until his or her successor is appointed. Vacancies shall be filled for the unexpired terms under the same procedures and requirements as appointments for full terms.

(c) The commission shall elect a chairperson from among its membership for a term of one year. The commission may elect a vice chairperson from its membership for a term of one year. Any member serving as chairperson shall be eligible for successive election to such office by the commission.

(d) The commission's medical advisory panel, appointed by the Governor, shall consist of four persons licensed to practice medicine in Georgia pursuant to the provisions of Chapter 34 of this title. They shall represent the specialties of neurology, ophthalmology, sports medicine, and general medicine. The medical advisory panel shall advise and assist the commission and its staff regarding issues and questions concerning the medical safety of applicants or licensees, including, but not limited to, matters relating to medical suspensions. The medical advisory panel may meet separately from the commission to discuss and formulate recommendations for the commission in connection with medical safety. Members of the medical advisory panel shall not be counted in determining a quorum of the commission and shall not vote as commission members.

(e) Each member of the commission and the medical advisory panel shall be reimbursed for expenses and travel as provided for members of various professional licensing boards in subsection (f) of Code Section 43-1-2. (Code 1981, § 43-4B-3, enacted by Ga. L. 2001, p. 752, § 2; Ga. L. 2005, p. 984, § 3/SB 224.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, "July 1, 2001," was substituted for "the effective date of this chapter," twice in subsection (a).

43-4B-4. Authority of commission; inspectors; preflight physicals; investigations; promotion of amateur boxing; identification cards for boxers; boxing registry; financial backing of professional events; tax payments.

(a) The commission is the sole regulator of professional boxing in Georgia and shall have authority to protect the physical safety and welfare of professional boxers and serve the public interest by closely supervising all professional boxing in Georgia.

(b) The commission shall have the sole jurisdiction to license the promotion or holding of each professional match, contest, or exhibition of boxing promoted or held within this state.

(c) The commission shall have the sole authority to license participants in any professional match, contest, or exhibition of boxing held in this state.

(d) The commission has the authority to direct, manage, control, and supervise all professional matches, contests, or exhibitions of boxing. It may adopt bylaws for its own management and promulgate and enforce rules and regulations consistent with this chapter.

(e) The commission may appoint one or more inspectors as duly authorized representatives of the commission to ensure that the rules are strictly observed. Such inspectors shall be present at all professional matches, contests, or exhibitions of boxing.

(f) The commission may designate physicians as duly authorized representatives of the commission to conduct physical examinations of boxers licensed under this chapter and shall designate a roster of physicians authorized to conduct preflight physicals and serve as ringside physicians in all professional boxing matches held in this state.

(g) The commission or any agent duly designated by the commission may make investigations. The commission may hold hearings; issue subpoenas to compel the attendance of witnesses and the production of books, papers, and records; and administer oaths to and examine any witnesses for the purpose of determining any question coming before it under this chapter or under the rules and regulations adopted pursuant to this chapter. During an investigation of any allegation which, if proven, would result in criminal or civil sanctions as provided in this chapter, the commission may withhold all or a portion of the gross receipts to which the person under investigation is entitled until such time as the matter has been resolved.

(h) The commission shall be authorized to engage in activities which promote amateur boxing in this state and to contract with any nonprofit organization which is exempted from the taxation of income pursuant

to Code Section 48-7-25 for the provision of services related to the promotion of amateur boxing in this state. To support amateur boxing in this state, the commission may promote voluntary contributions through the application process or through any fund raising or other promotional technique deemed appropriate by the commission.

(i) Pursuant to 15 U.S.C.A. Section 6301, et seq., the commission is authorized to issue to each boxer who is a resident of this state an identification card bearing the boxer's photograph and in such form and containing such information as the commission deems necessary and appropriate. The commission is expressly authorized to ensure that the form and manner of issuance of such identification cards comply with any applicable federal law or regulation. The commission is authorized to charge an amount not to exceed \$100.00 per card for the issuance or replacement of each identification card.

(j) The commission is authorized to create a boxing registry or to designate a nationally recognized boxing registry and to register each boxer who is a resident of this state or who is a resident of another state which has no boxing registry.

(k) The commission is authorized to inquire into the financial backing of any professional match, contest, or exhibition of boxing and obtain answers to written or oral questions propounded to all persons associated with such professional event.

(l) The commission is authorized to receive tax payments in accordance with Code Section 43-4B-20, and to remit such tax payments to the general treasury. (Code 1981, § 43-4B-4, enacted by Ga. L. 2001, p. 752, § 2; Ga. L. 2003, p. 774, § 25.)

U.S. Code. — Muhammad Ali Boxing Reform Act, 15 U.S.C. § 6301 et seq.

43-4B-5. Secretary of commission.

The Secretary of State shall designate the secretary of the commission, who shall issue licenses and identification cards and perform such other duties as the commission may direct to carry out the provisions of this chapter. (Code 1981, § 43-4B-5, enacted by Ga. L. 2001, p. 752, § 2.)

43-4B-6. Commission meetings.

(a) The commission shall meet upon the call of the chairperson or upon the call of any two members. The business of the commission shall be conducted by a majority vote of the members present. A majority of the commission members shall constitute a quorum.

(b) The chairperson, if necessary, may within ten days of receiving an application and license fee call a meeting of the commission for the purpose of approving or rejecting an application for a license or match permit which has been submitted to the commission. The meeting shall be held within 20 days of the chairperson's call at a place designated by the chairperson. (Code 1981, § 43-4B-6, enacted by Ga. L. 2001, p. 752, § 2.)

43-4B-7. Rules and regulations governing professional boxing.

The commission shall adopt rules and regulations governing professional boxing to establish the following:

(1) Procedures to evaluate the professional records and physicians' certifications of each boxer participating in a professional match, contest, or exhibition of boxing and to deny authorization for a professional boxer to fight where appropriate;

(2) Procedures to ensure that, except as otherwise provided in subsection (c) of Code Section 43-4B-13, no professional boxer is permitted to box while under suspension from any state boxing commission because of:

(A) A recent knockout, technical knockout, or series of consecutive losses;

(B) An injury, requirement for a medical procedure, or physician's denial of certification;

(C) Failure of a drug test; or

(D) The use of false aliases or falsifying official identification cards or documents; and

(3) Procedures to report to the boxing registry the results of all professional matches, contests, or exhibitions of boxing held in this state or being supervised by the commission and any related suspensions. (Code 1981, § 43-4B-7, enacted by Ga. L. 2001, p. 752, § 2.)

Code Commission notes.— Pursuant Section 43-4B-13" was substituted for to Code Section 28-9-5, in 2001, "Code "Code Section 43-4B-14" in paragraph (2).

43-4B-8. Prohibited compensation to commission members.

No member or employee of the commission and no person who administers or enforces the provisions of this chapter or rules promulgated in accordance with this chapter may belong to, contract with, or receive any compensation from any person or organization who authorizes, arranges, or promotes professional matches, contests, or exhibitions of boxing, martial arts, or wrestling or who otherwise has a

financial interest in any activity or licensee regulated by this commission. The term "compensation" does not include funds held in escrow for payment to another person in connection with a professional match, contest, or exhibition of boxing, martial arts, or wrestling. (Code 1981, § 43-4B-8, enacted by Ga. L. 2001, p. 752, § 2; Ga. L. 2005, p. 984, § 4/SB 224.)

ARTICLE 2

LICENSING AND PARTICIPATORY REQUIREMENTS

43-4B-10. Promoter's license and match permit requirements; applications; performance bond; fees.

(a) No person shall promote or hold a professional match, contest, or exhibition of boxing within this state without first applying for and obtaining a promoter's license from the commission. Licenses shall be issued annually and shall expire on December 31 of each calendar year.

(b) Promoters shall apply to the commission for a license required by subsection (a) of this Code section on a form provided by the commission. The application shall be accompanied by a nonrefundable fee not to exceed \$250.00 in the form of a cashier's check made out to the commission. The application shall also be accompanied by a performance bond in an amount and under such conditions as the commission may require.

(c) No person shall promote or hold a professional match, contest, or exhibition of boxing within this state without first applying for and obtaining a match permit from the commission for such professional match, contest, or exhibition of boxing in addition to the license required by subsection (a) of this Code section. Each application for a match permit shall be on a form provided by the commission and shall be accompanied by a nonrefundable application fee not to exceed \$250.00 in the form of a cashier's check made out to the commission. The commission may charge an additional match fee in accordance with rules and regulations promulgated by the commission to implement the provisions of this article.

(d) The commission may, prior to issuing any match permit, require a performance bond in addition to that required in subsection (b) of this Code section.

(e) The commission may refund any portion of the match permit fee in excess of \$250.00 to any person who paid such excess fee in the event the professional match, contest, or exhibition of boxing for which such fees were paid is not held. (Code 1981, § 43-4B-10, enacted by Ga. L. 2001, p. 752, § 2.)

43-4B-11. Required licenses for boxers and nonboxing participants; prerequisites to licenses.

(a) Prior to participating in a professional match, contest, or exhibition of boxing supervised by the commission, referees, judges, timekeepers, matchmakers, boxers, managers, trainers, and each person who assists a boxer immediately before and after a match, contest, or exhibition of boxing and between rounds during a match, contest, or exhibition of boxing shall apply for and be issued licenses. Licenses shall be issued annually and shall expire on December 31 of each calendar year. Each applicant shall make application on a form provided by the commission and pay an annual license fee not to exceed \$250.00. Any boxer who has been licensed by the commission during a previous year shall be deemed to be an applicant for a license in any year for which such boxer has entered into a written contract to participate in a professional match, contest, or exhibition of boxing in this state upon the date of entering into such a contract. Any party to such a contract may notify the commission that such a contract has been signed.

(b) The commission shall issue a license under this Code section only if:

(1) The commission has determined to the best of its ability that the applicant has the training or skills necessary to perform in a manner appropriate to the license;

(2) The applicant has complied with all applicable requirements of this chapter and any rules and regulations promulgated pursuant to this chapter; and

(3) The commission or its designated representative has determined from information provided by the applicant and from any medical evaluation required by the commission that the health, welfare, and physical safety of the applicant will not be unduly jeopardized by the issuance of the license. (Code 1981, § 43-4B-11, enacted by Ga. L. 2001, p. 752, § 2; Ga. L. 2003, p. 774, § 26.)

43-4B-12. Registry requirements for boxers; identification card; fees.

In addition to the license required in Code Section 43-4B-11, each professional boxer who is a resident of this state or another state which has no state boxing commission is required to register with a boxing registry created or designated by the commission and renew his or her registration as prescribed by rules of the commission. At the time of registration and renewal, the boxer shall provide the boxing registry with a recent photograph of the boxer and the social security number of

the boxer or, in the case of a foreign boxer, any similar citizen identification number or boxer number from the country of residence of the boxer, along with any other information the commission requires. The boxing registry shall issue a personal identification number to each boxer and such number shall appear on the identification card issued to the boxer as a result of registration. Each boxer is required to present to the boxing commission an identification card issued by the state in which he or she resides not later than the time of the weigh-in for a professional match, contest, or exhibition. The commission may charge a registration fee in an amount calculated to cover the administrative expense of such registration. (Code 1981, § 43-4B-12, enacted by Ga. L. 2001, p. 752, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, “Code Section 43-4B-11” was substituted for “Code Section 43-4B-12” near the beginning of this Code section.

43-4B-13. Authority to refuse to grant or to revoke or suspend license; fines; revoking suspension.

(a) The commission shall have the authority to refuse to grant a license to an applicant upon a finding by a majority of the entire commission that the applicant has failed to demonstrate the qualifications or standards for a license contained in this Code section or under the laws, rules, and regulations under which licensure is sought. It shall be incumbent upon the applicant to demonstrate to the satisfaction of the commission that he or she meets all the requirements for the issuance of a license, and, if the commission is not satisfied as to the applicant's qualifications, it may deny a license without a prior hearing; provided, however, that the applicant shall be allowed to appear before the commission if he or she so desires.

(b) The commission may, by majority vote, after prior notice to the holder of any state license and after affording such a holder an opportunity to be heard, fine the license holder, revoke or suspend a state license, or take other disciplinary action against the licensee, and:

(1) The commission shall, upon the recommendation of any officially designated representative for reasons involving the medical or physical safety of any professional boxer licensed by the commission, summarily suspend any license previously issued by the commission or take other disciplinary action against any licensee; provided, however, that such licensee shall, after such summary suspension, be afforded an opportunity to be heard, in accordance with the rules of the commission and Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” Any such summary suspension imposed against such a licensee may include, but shall not be limited to:

(A) Prohibiting any boxer from competing, appearing in, or participating in any professional match, contest, or exhibition within 60 days of having suffered a knockout; or

(B) Prohibiting any boxer from competing, appearing in, or participating in any professional match, contest, or exhibition within 30 days of having suffered a technical knockout where evidence of head trauma has been determined by the attending ringside physician.

The length of any summary suspension invoked pursuant to subparagraph (A) or (B) of this paragraph, upon recommendation of the ringside physician, may be extended to any number of days. Terms and conditions of the suspension or revocation may require that the boxer submit to further medical evaluation as determined by the ringside physician; and

(2) The commission, its secretary, or its duly authorized representative may, at any time prior to the completion of a permitted professional match, contest, or exhibition of boxing, summarily suspend or revoke the match permit or the license of any specific boxer should it be determined by such person that the continuation of said professional match, contest, or exhibition of boxing may jeopardize the health, welfare, morals, or safety of the citizens of this state or may jeopardize the health or personal safety of any participant of such professional match, contest, or exhibition of boxing; provided, however, that such licensee shall, after such summary suspension, be afforded an opportunity to be heard, in accordance with the rules of the commission and Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(c) The commission may revoke a suspension of a boxer if:

(1) The boxer was suspended pursuant to rules and regulations adopted pursuant to subparagraph (A) or (B) of paragraph (2) of Code Section 43-4B-7 and has furnished proof of a sufficiently improved medical or physical condition; or

(2) The boxer furnishes proof that a suspension pursuant to subparagraph (D) of paragraph (2) of Code Section 43-4B-7 was not or is no longer merited by the facts. (Code 1981, § 43-4B-13, enacted by Ga. L. 2001, p. 752, § 2; Ga. L. 2005, p. 60, § 43/HB 95.)

43-4B-14. Prequalification requirements for events.

No person may arrange, promote, organize, produce, or participate in a professional match, contest, or exhibition of boxing without meeting the following requirements:

(1) Each boxer must be examined by a physician who must then certify that the boxer is physically fit to compete safely. Copies of each such certificate shall be provided to the commission prior to the professional match, contest, or exhibition of boxing. The commission is authorized at any time to require a boxer to undergo a physical examination, including neurological or neuropsychological tests and procedures;

(2) A physician approved by the commission must be continuously present at ringside during every professional match, contest, or exhibition of boxing. The physician shall observe the physical condition of the boxers and advise the referee with regards thereto;

(3) One or more inspectors appointed by the commission as duly authorized representatives of the commission shall be present at each professional match, contest, or exhibition of boxing to ensure that the rules are strictly observed. An inspector or other duly authorized representative of the commission must be present at the weigh-in and at the ring during the conduct of the professional match, contest, or exhibition of boxing. Inspectors and other duly authorized representatives of the commission shall have free access to the dressing rooms of the boxers;

(4) Each boxer shall be covered by health insurance which will cover injuries sustained during the professional match, contest, or exhibition of boxing; and

(5) An ambulance and medical personnel with appropriate resuscitation equipment must be continuously present at the site during any professional match, contest, or exhibition of boxing. (Code 1981, § 43-4B-14, enacted by Ga. L. 2001, p. 752, § 2.)

43-4B-15. Alcohol and drug use prohibited.

It shall be unlawful for any boxer to participate or attempt to participate in a professional match, contest, or exhibition of boxing while under the influence of alcohol or any drug. A boxer shall be deemed under the influence of alcohol or a drug for the purposes of this Code section if a physical examination made during a period of time beginning not more than six hours prior to the beginning of the professional match, contest, or exhibition of boxing and ending not more than one hour after the completion of the professional match, contest, or exhibition of boxing reveals that the boxer's mental or physical ability is impaired in any way as a direct result of the use of alcohol or a drug. (Code 1981, § 43-4B-15, enacted by Ga. L. 2001, p. 752, § 2.)

43-4B-16. Building standards and regulations for matches.

All buildings or structures used or intended to be used for holding or giving professional matches, contests, or exhibitions of boxing shall be

safe and shall in all manner conform to the laws, ordinances, and regulations pertaining to buildings in the city or unincorporated area of the county where the building or structure is situated. (Code 1981, § 43-4B-16, enacted by Ga. L. 2001, p. 752, § 2.)

43-4B-17. Age requirements; stricter standards for boxers over age 50.

(a) No person under the age of 18 years shall participate as a contestant in any professional match, contest, or exhibition of boxing.

(b) A primary duty of the commission is ensuring that any person whose health does not permit safely engaging in boxing as a contestant is not licensed as a professional boxer. The General Assembly finds that adequate protection of the health of persons who are 50 years of age or older requires additional precautions by the commission. A person who is 50 years of age or older shall be licensed as a professional boxer and permitted to participate in a professional match, contest, or exhibition of boxing only if such person:

(1) Has participated as a contestant in at least ten professional matches or contests of boxing in the immediately preceding ten years, including at least four professional matches or contests of boxing in the immediately preceding four years; and

(2) Is declared medically and physically able to participate as a contestant in a professional match, contest, or exhibition of boxing by a physician who has conducted a more rigorous examination than examinations performed in accordance with this chapter for persons who are younger than 50 years of age.

(c) The commission shall promulgate and adopt rules and regulations for the more rigorous examination required by this Code section for persons who are 50 years of age or older. (Code 1981, § 43-4B-17, enacted by Ga. L. 2001, p. 752, § 2; Ga. L. 2003, p. 774, § 27.)

43-4B-18. Jurisdiction of commission.

The commission shall have jurisdiction over any professional match, contest, or exhibition of boxing which occurs or is held within this state, is filmed in this state, or is broadcast or transmitted from this state. (Code 1981, § 43-4B-18, enacted by Ga. L. 2001, p. 752, § 2.)

43-4B-19. Proceedings for violations of article.

(a) Whenever it may appear to the commission that any person is violating or has violated any provision of this article or Article 1 of this chapter and that proceedings would be in the public interest:

(1) Subject to notice and opportunity for hearing in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," unless the right to notice is waived by the person against whom the sanction is imposed, the commission may:

(A) Issue a cease and desist order prohibiting any violation of this article or Article 1 of this chapter;

(B) Issue an order against a person who violates this article or Article 1 of this chapter, imposing a civil penalty up to a maximum of \$1,000.00 per violation; or

(C) Issue an order suspending or revoking the license of the person violating this article or Article 1 of this chapter; or

(2) Upon a showing by the commission in any superior court of competent jurisdiction that a person has violated or is about to violate this article or Article 1 of this chapter, a rule promulgated under this article or Article 1 of this chapter, or an order of the commission, the court may enter or grant any or all of the following relief:

(A) A temporary restraining order or a temporary or permanent injunction;

(B) A civil penalty up to a maximum of \$2,000.00 per violation of this article or Article 1 of this chapter;

(C) A declaratory judgment;

(D) Restitution to any person or persons adversely affected by a defendant's action in violation of this article or Article 1 of this chapter; or

(E) Other relief as the court deems just or reasonable.

(b) Unless the commission determines that a person subject to this article intends to depart quickly from this state or to remove his or her property from this state or to conceal his or her person or property in this state or that there is immediate danger of harm to citizens of this state or another state, the commission shall give notice in writing that such proceedings are contemplated and allow such person a reasonable opportunity to appear before the commission and execute an assurance of voluntary compliance. The determination of the commission under this subsection shall be final and not subject to review.

(c) Procedures relating to hearings, notice, counsel, subpoenas, records, enforcement powers, intervention, rules of evidence, decisions, exceptions, review of initial decisions, final decisions, and judicial review of decisions shall be governed by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," unless the provisions of such chapter are contrary to the express provisions of this article or Article

1 of this chapter. (Code 1981, § 43-4B-19, enacted by Ga. L. 2003, p. 774, § 28.)

43-4B-20. Report by promoter required; pay preview promoters; tax payment; falsifying report.

(a) A promoter holding a match, contest, or exhibition of boxing shall, within three business days after the match, file with the commission a written report which includes the number of tickets sold, the amount of gross receipts, the amount of gross proceeds, and any other facts the commission may require. Within ten days following the match, contest, or exhibition of boxing, the promoter shall remit to the commission a tax payment in the amount of 5 percent of the gross proceeds exclusive of any federal taxes.

(b) A promoter who sells, transfers, or extends to another the rights to telecast by pay per view for viewing in this state, whether the telecast originates inside or outside this state, a match, contest, or exhibition of boxing that would be subject to regulation by the commission in accordance with this chapter if the match, contest, or exhibition were held in this state, shall, within three business days after the sale, transfer, or extension of such rights in whole or in part, file with the commission a written report that includes the gross price charged for the rights to telecast by pay per view, the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.

(c) Any written report required to be filed with the commission under this Code section shall be postmarked within three business days after the conclusion of the match or telecast, if the telecast is later than the match, and an additional five days shall be allowed for mailing.

(d) Each promoter subject to subsection (b) of this Code Section shall remit to the commission within ten days following a match, contest, or exhibition a tax payment in the amount of 5 percent of total gross receipts, as defined in subparagraph (A) of paragraph (8) of Code Section 43-4B-1, exclusive of any federal taxes, except that the tax payment derived from the gross price charged for the sale or lease of pay per view telecasting and motion picture rights shall not exceed \$40,000.00 for any single event.

(e)(1) Any promoter who willfully makes a false and fraudulent report under this Code section is guilty of perjury and, upon conviction, is subject to punishment as provided by law. Such penalty shall be in addition to any other penalties imposed by this chapter.

(2) Any promoter who willfully fails, neglects, or refuses to make a report or to pay the taxes as prescribed or who refuses to allow the

commission to examine the books, papers, and records of any promotion is guilty of a misdemeanor.

(f) The commission shall remit all tax payments to the general treasury of the state. (Code 1981, § 43-4B-20, enacted by Ga. L. 2003, p. 774, § 28; Ga. L. 2005, p. 984, § 5/SB 224.)

43-4B-21. Injunctions; penalty for violations of article; unarmed combat.

(a) Whenever the Attorney General has reasonable cause to believe that a person is engaged in a violation of this article, the Attorney General may bring a civil action requesting such relief, including a permanent or temporary injunction, restraining order, or other order against such person as the Attorney General determines to be necessary to restrain the person from continuing to engage in, sanction, promote, or otherwise participate in a professional match, contest, or exhibition of boxing in violation of this article.

(b)(1) Any manager, promoter, matchmaker, or licensee who knowingly violates or coerces or causes any other person to violate any provision of this article shall, upon conviction, be imprisoned for not more than one year or fined not more than \$20,000.00, or both.

(2) Any member or employee of the commission or any person who administers or enforces this chapter or rules and regulations promulgated pursuant to this chapter who knowingly violates Code Section 43-4B-14 or Code Section 43-4B-15 shall, upon conviction, be imprisoned for not more than one year or fined not more than \$20,000.00, or both.

(3) Any professional boxer who knowingly violates any provision of this article except Code Section 43-4B-15 shall, upon conviction, be fined not more than \$1,000.00 for each violation.

(4) Any professional boxer who violates the provisions of Code Section 43-4B-15 may be punished by a fine not to exceed \$25,000.00 together with a percentage of the purse not to exceed 15 percent for each violation.

(c) Unarmed combat, as defined in Code Section 43-4B-1, is a misdemeanor of a high and aggravated nature.

(d) Promotion of unarmed combat, as defined in Code Section 43-4B-1, is a misdemeanor for the first offense; a high and aggravated misdemeanor for the second offense; and a felony for the third and subsequent offenses, punishable upon conviction by a fine not to exceed \$10,000.00 or imprisonment not to exceed two years, or both such fine and imprisonment. (Code 1981, § 43-4B-21, enacted by Ga. L. 2003, p. 774, § 28; Ga. L. 2005, p. 984, § 6/SB 224.)

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required for violators. — O.C.G.A. § 43-4B-21 is an offense for which those charged with a violation

are to be fingerprinted. 2006 Op. Att'y Gen. No. 2006-2.

ARTICLE 3

TICKET BROKERS

43-4B-25. Authority to resell tickets; service charges.

(a) Except as otherwise provided in Code Section 43-4B-29, it shall be unlawful for any person other than a ticket broker to resell or offer for resale any ticket of admission or other evidence of the right of entry to any athletic contest, concert, theater performance, amusement, exhibition, or other entertainment event to which the general public is admitted for a price in excess of the face value of the ticket. Notwithstanding any other provision of this article to the contrary, a service charge not to exceed \$3.00 may be charged when tickets or other evidences of the right of entry are sold by an authorized ticket agent through places of established business licensed to do business by the municipality or county, where applicable, in which such places of business are located. Notwithstanding any other provision of this article to the contrary, the owner, operator, lessee, or tenant of the property on which such athletic contest or entertainment event is to be held or is being held or the sponsor of such contest or event may charge or may authorize, in writing, any person to charge a service charge for the sale of such ticket, privilege, or license of admission in addition to the face value of the ticket. Such writing granting authority to another shall specify the amount of the service charge to be charged for the sale of each ticket, privilege, or license of admission.

(b) Notwithstanding any other provision of this article to the contrary, in the case of any athletic contest or entertainment event that is described in Code Section 43-4B-30, a sponsor of such a contest or event may contractually restrict the resale of a ticket to such contest or event by giving notice of such restriction on the back of the ticket. Notwithstanding any other provision of this article to the contrary, in the case of any athletic contest or entertainment event, an owner, operator, lessee, or tenant of the property on which such contest or event is to be held or is being held may contractually restrict the resale of the right of occupancy of any specific suite, seat, or seating area by giving notice in writing of such restriction. (Code 1981, § 43-4B-25, enacted by Ga. L. 2001, p. 752, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting. — Georgia Crime Information Center is not authorized to collect and file fingerprints of persons charged with a violation of O.C.G.A. § 43-4B-25. 2001 Op. Att'y Gen. No. 2001-11.

43-4B-26. Requirements.

In order to engage in the practice or business of a ticket broker a person shall be required to:

- (1) Maintain a permanent office or place of business in this state, excluding a post office box, for the purpose of engaging in the business of a ticket broker;
- (2) Apply to the commission for a ticket broker's license on a form designated by the commission, pay an annual license fee of \$500.00, and renew the license annually;
- (3) Pay any local tax required by a local government; and
- (4) Register for sales and use tax purposes pursuant to Article 1 of Chapter 8 of Title 48. (Code 1981, § 43-4B-26, enacted by Ga. L. 2001, p. 752, § 2; Ga. L. 2003, p. 774, § 29; Ga. L. 2005, p. 984, § 7/SB 224.)

43-4B-27. Disqualification for felony conviction.

No person shall engage in the practice or business of a ticket broker, or be employed as general manager for a person engaged in the practice or business of a ticket broker, who has been convicted of a felony and who has not been pardoned or had his or her civil rights restored. (Code 1981, § 43-4B-27, enacted by Ga. L. 2001, p. 752, § 2.)

Cross references. — Equal protection, U.S. Const., amend. 14, and Ga. Const. 1983, Art. I, Sec. I, Para. II.

43-4B-28. Resale by ticket brokers; disclosure requirements; sale and resale restrictions; refunds.

(a) The ticket broker shall be required to:

- (1) Post at its established place of business the terms of the purchaser's right to cancel the purchase of a ticket from a ticket broker;
- (2) Disclose to the purchaser the refund policy of the ticket broker should an athletic contest or entertainment event be canceled;
- (3) Disclose to the purchaser in writing the difference between the face value of the ticket and the amount which the ticket broker is charging for such ticket; and

(4) Sell tickets only at its permanent office, place of business, or through the Internet; provided, however, that delivery of one or more tickets after the transaction is completed to a place other than the ticket broker's office or place of business shall not violate this paragraph.

(b)(1) A ticket broker shall be prohibited from employing any agent or employee for the purpose of making future purchases of tickets from the owner, operator, lessee, or tenant of the property on which an athletic contest or entertainment event is to be held.

(2) Each ticket broker, including any affiliated group of ticket brokers, shall be prohibited from acquiring and reselling in excess of 1 percent of the total tickets allocated for any contest or event.

(3) Unless otherwise provided in a written agreement between a ticket broker and the purchaser, a ticket broker shall be required to refund any payment received for the purchase of a ticket under this article if the purchaser returns the ticket and requests a cancellation of the sale thereof within 36 hours from the time of purchase of the ticket and if such return is made more than 72 hours preceding the athletic contest or entertainment event.

(4) A ticket broker shall be required to refund any payment received for the purchase of a ticket under this article if the athletic contest or entertainment event is canceled and not rescheduled.

(5) If a ticket broker guarantees in writing delivery of a ticket or tickets to an athletic contest or entertainment event as provided under this article to a purchaser and fails to complete such delivery, the ticket broker shall be required to provide within 15 days a full refund of any amount paid by the purchaser and, in addition, shall pay the purchaser a refund fee of three times the amount paid by the purchaser for each such ticket.

(c)(1) For all venues which seat or admit less than 15,000 persons, a ticket broker and its employees, agents, and assigns are criminally prohibited from reselling or offering for resale any ticket within 1,500 feet from the venue where an event or contest is to be held or is being held.

(2) For all venues which seat or admit 15,000 or more persons, a ticket broker and its employees, agents, and assigns are criminally prohibited from reselling or offering for resale any ticket within 2,700 feet from the venue where an event or contest is to be held or is being held.

(d) Any ticket broker offering to resell tickets to an athletic contest or entertainment event through any printed, broadcast, or Internet advertising shall include in such advertising the license number of such

ticket broker offering such tickets for resale. (Code 1981, § 43-4B-28, enacted by Ga. L. 2001, p. 752, § 2; Ga. L. 2003, p. 774, § 30; Ga. L. 2005, p. 984, § 8/SB 224.)

43-4B-29. Resale of tickets by original purchaser; charitable organizations.

(a) No provision of this article or any other provision of law shall criminally prohibit any person who is the original purchaser for personal use of one or more tickets to an athletic contest or entertainment event covered under this article from reselling or offering for resale any of such tickets for any price, provided that such person does not sell or offer to sell such tickets within 2,700 feet of a venue which seats or admits 15,000 or more persons for such a contest or event or a public entrance to such a contest or event.

(b) Charitable organizations and their employees and volunteers shall not be subject to the provisions of this article when offering for sale any tickets of admission in a raffle, auction, or similar fundraising activity for the benefit of the organization's charitable purposes. (Code 1981, § 43-4B-29, enacted by Ga. L. 2001, p. 752, § 2; Ga. L. 2002, p. 415, § 43; Ga. L. 2005, p. 984, § 9/SB 224.)

43-4B-29.1. Resale within zone authorized by the event organizer and the venue owner or operator.

(a) Notwithstanding subsection (c) of Code Section 43-4B-28 and subsection (b) of Code Section 43-4B-30, no provision of this article or any other provision of law shall provide a criminal penalty for or prohibit the resale or offering for resale of a ticket or tickets to an athletic contest or entertainment event covered under this article by a ticket broker or a ticket broker's employees, agents, and assigns in a zone or zones within the area where such resale or offering for resale is prohibited by such subsections, if such activity is authorized by the organizer of the contest or event and the owner or operator of the venue where such contest or event is being held or to be held.

(b) Notwithstanding subsection (a) of Code Section 43-4B-29 and subsection (b) of Code Section 43-4B-30, no provision of this article or any other provision of law shall provide a criminal penalty for or prohibit the resale or offering for resale of a ticket or tickets purchased by any person who is the original purchaser for personal use of such ticket or tickets to an athletic contest or entertainment event covered under this article in a zone or zones within the area where such resale or offering for resale is prohibited by such subsections, if such activity is authorized by the organizer of the contest or event and the owner or operator of the venue where such contest or event is being held or to be held.

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held. (Code 1981, § 43-4B-29.1, enacted by Ga. L. 2005, p. 984, § 10/SB 224.)

Code Commission notes. — Pursuant was deleted following “Code Section to Code Section 28-9-5, in 2005, a comma 43-4B-28” in subsection (a).

43-4B-30. County and municipal ordinances.

(a) With regard to any single athletic contest or entertainment event which occurs no more often than once annually and with regard to any series of athletic contests which occur no more often than once annually and which occur within a time period not exceeding ten days, the municipal corporation in which such contest, event, or series of contests is to be held, or if the contest, event, or series of contests is to be held in an unincorporated area, the county of such unincorporated area, is authorized to enact by ordinance regulations governing ticket brokers for such contest, event, or series of contests which are more restrictive than the provisions of this article.

(b) The municipal corporation in which an athletic contest or entertainment event is to be held, or if the contest or entertainment event is to be held in an unincorporated area, the county of such unincorporated area, is authorized to enact an ordinance prohibiting the resale or offering for resale of one or more tickets by a ticket broker or by a person who is the original purchaser for personal use of one or more tickets within 2,700 feet of a venue which seats or admits 15,000 or more persons. (Code 1981, § 43-4B-30, enacted by Ga. L. 2001, p. 752, § 2; Ga. L. 2003, p. 774, § 31; Ga. L. 2005, p. 984, § 11/SB 224.)

43-4B-31. Violation of article a misdemeanor.

Any person who violates this article is guilty of a misdemeanor of a high and aggravated nature. (Code 1981, § 43-4B-31, enacted by Ga. L. 2001, p. 752, § 2.)

43-4B-32. Powers of commission upon violation of article.

(a) In addition to the powers and duties set out in Code Section 43-4B-3, the commission is authorized to promulgate rules and regulations to accomplish the purposes of this article in accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” The commission shall enforce the provisions of this article. The enforcement powers of the commission set out in this Code section shall be in addition to the criminal penalty provided by Code Section 43-4B-31.

(b) Whenever it may appear to the commission that any person is violating or has violated any provision of this article and that proceedings would be in the public interest:

(1) Subject to notice and opportunity for hearing in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," unless the right to notice is waived by the person against whom the sanction is imposed, the commission may:

(A) Issue a cease and desist order prohibiting any violation of this article;

(B) Issue an order against a person who violates this article, imposing a civil penalty up to a maximum of \$1,000.00 per violation; or

(C) Issue an order suspending or revoking the ticket broker's license; or

(2) Upon a showing by the commission in any superior court of competent jurisdiction that a person has violated or is about to violate this article, a rule promulgated under this article, or an order of the commission, the court may enter or grant any or all of the following relief:

(A) A temporary restraining order or a temporary or permanent injunction;

(B) A civil penalty up to a maximum of \$2,000.00 per violation of this article;

(C) A declaratory judgment;

(D) Restitution to any person or persons adversely affected by a defendant's action in violation of this article; or

(E) Other relief as the court deems just or reasonable.

(c) Unless the commission determines that a person subject to this article intends to depart quickly from this state or to remove his or her property from this state or to conceal his or her person or property in this state or that there is immediate danger of harm to citizens of this state or another state, the commission shall give notice in writing that such proceedings are contemplated and allow such person a reasonable opportunity to appear before the commission and execute an assurance of voluntary compliance. The determination of the commission under this subsection shall be final and not subject to review.

(d) Procedures relating to hearings, notice, counsel, subpoenas, records, enforcement powers, intervention, rules of evidence, decisions, exceptions, review of initial decisions, final decisions, and judicial review of decisions shall be governed by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," unless the provisions of such chapter are contrary to the express provisions of this article. (Code 1981, § 43-4B-32, enacted by Ga. L. 2001, p. 752, § 2.)

ARTICLE 4

REGULATION OF MARTIAL ARTS AND WRESTLING

43-4B-50. Authority and duties of the commission with regard to licensure, exemption from licensure, and regulation.

(a) The commission shall have the sole authority to license organizations that govern and authorize matches, contests, and exhibitions of martial arts and wrestling and to exempt organizations from licensure in accordance with this article. The commission shall have the sole authority to permit and regulate matches, contests, and exhibitions of martial arts and wrestling. The commission shall have the sole authority to license promoters of matches, contests, and exhibitions of martial arts. The commission shall have the duty to safeguard the public health, to protect competitors, and to provide for competitive matches by requiring licensed organizations to abide by rules promulgated by the commission for basic minimum medical and safety requirements based on the nature of the activity and the anticipated level of physical conditioning and training of competitors. The commission shall have the authority to inquire as to a licensed organization's plans or arrangements for compliance with such rules. The commission shall have the authority to require annual fees for licensure and a fee for each such match, contest, or exhibition or for each show and to penalize licensed organizations, licensed promoters, and the holders of match permits that violate the provisions of this article or rules of the commission promulgated in accordance with this article.

(b) If requested by a licensed organization, the commission shall have the authority to provide direct oversight services, including but not limited to on-site inspectors, to a licensed organization for a fee negotiated between the commission and the licensed organization. (Code 1981, § 43-4B-50, enacted by Ga. L. 2005, p. 984, § 12/SB 224.)

43-4B-51. Fees.

(a) Except as otherwise provided in subsection (c) of this Code section, the annual fee for licensure of organizations subject to this article is \$1,000.00.

(b) As used in this subsection, the term "show" includes all matches, contests, or exhibitions held at the same venue on the same date and included in the same admission fee if an admission fee is charged. Except as otherwise provided in subsection (c) of this Code section, the maximum permit fee for each show authorized or governed by an organization licensed in accordance with this article is \$250.00. The

maximum permit fee for each match, contest, or exhibition that is not a component of a show and is authorized by an organization licensed in accordance with this article is \$250.00, except as otherwise provided in subsection (c) of this Code section. Such fee shall be paid to the commission on or before the date of the match, contest, or exhibition. The commission may provide by rule for a refund of a portion of the fee if the match, contest, or exhibition is not held.

(c) For organizations authorizing or governing matches, contests, or exhibitions of wrestling as defined in subparagraph (A) of paragraph (21) of Code Section 43-4B-1, the annual fee for licensure is \$100.00. There shall be no permit fee for matches, contests, or exhibitions of wrestling as defined in such subparagraph. Organizations subject to this subsection shall make reports to the commission in accordance with rules and regulations promulgated by the commission.

(d) The annual fee for a promoter's license for promoters of martial arts matches, contests, or exhibitions shall be \$500.00. (Code 1981, § 43-4B-51, enacted by Ga. L. 2005, p. 984, § 12/SB 224.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, “exhibitions” was substituted for “exhibits” in the first sentence of subsection (b).

43-4B-52. Requirements for matches, contests, and exhibitions.

(a) A licensed organization shall provide written notice to the commission of a match, contest, or exhibition authorized and governed by the organization no later than 15 days before the date of the match, contest, or exhibition. The licensed organization governing the match, contest, or exhibition shall provide information required by the commission relating to the contestants, venue, rules for the competition, and anticipated level of physical conditioning and training of the contestants.

(b) A licensed organization shall, after a match, contest, or exhibition authorized and governed by the organization, file with the commission an affidavit that includes the number of tickets sold, the amount of gross receipts, the amount of sales tax to be paid to the Department of Revenue, and any other facts the commission may require. Such affidavit shall be postmarked within three business days after the conclusion of the match, contest, or exhibition. (Code 1981, § 43-4B-52, enacted by Ga. L. 2005, p. 984, § 12/SB 224.)

43-4B-53. Prohibited activities for felons or persons convicted of crime of moral turpitude.

(a) Notwithstanding any other provision of this chapter or any other law to the contrary, no person or entity shall directly or indirectly

engage in the practice of being a promoter of kickboxing, muay thai, Thai boxing, full-contact karate, mixed martial arts, shidokan, or martial arts matches, contests, exhibitions of any type, or be employed or otherwise serve as a manager, matchmaker, or organizer for any person or entity engaged in the practice of being a promoter of kickboxing, muay thai, Thai boxing, full-contact karate, mixed martial arts, or martial arts matches, contests, or exhibitions of any type, who has been convicted of, has pleaded guilty to, has entered a plea of nolo contendere to, or has been found guilty of a felony or crime of moral turpitude under the laws of this state or any offense that, had it occurred within this state, would constitute a felony or crime of moral turpitude under the laws of this state for a period of ten years from the date of such conviction or plea. For purposes of this Code section, a conviction shall include but not be limited to disposition under Article 3 of Chapter 8 of Title 42.

(b) Notwithstanding any other provision of this chapter or any other law to the contrary, no person or entity shall be retained, employed, or otherwise serve as a sanctioning, governing, licensing, authorizing, or ranking body or organization or act as an employee or representative thereof for any kickboxing, muay thai, full-contact karate, mixed martial arts, shidokan, or martial arts matches, contests, or exhibitions of any type promoted, managed, or organized in violation of subsection (a) of this Code section.

(c) Notwithstanding any other provision of this chapter or any other law to the contrary, no sanctioning, governing, licensing, authorizing, or ranking body or organization for any kickboxing, muay thai, Thai boxing, full-contact karate, mixed martial arts, shidokan, or martial arts matches, contests, or exhibitions of any type shall employ, designate, or otherwise assign or utilize any person as a representative or official who has pleaded guilty to, has entered a plea of nolo contendere to, or has been found guilty of a felony or crime of moral turpitude under the laws of this state or any offense that, had it occurred within this state, would constitute a felony or crime of moral turpitude under the laws of this state for a period of ten years from the date of such conviction or plea. For purposes of this Code section, a conviction shall include but not be limited to disposition under Article 3 of Chapter 8 of Title 42.

(d) The first violation of this Code section by any individual or entity shall constitute a misdemeanor of a high and aggravated nature. Any second and subsequent conviction under this Code section shall constitute a felony and shall be punished by imprisonment for not less than one nor more than five years. (Code 1981, § 43-4B-53, enacted by Ga. L. 2005, p. 984, § 12/SB 224.)

Code Commission notes. — Pursuant “kickboxing” was substituted for “kick to Code Section 28-9-5, in 2005, boxing” in subsections (a), (b) and (c).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required for violators. — O.C.G.A. § 43-4B-53 is an offense for which those charged with a violation

are to be fingerprinted. 2006 Op. Att’y Gen. No. 2006-2.

43-4B-54. Suspension, revocation, or denial of licenses or permits; fines.

(a) The commission is authorized to suspend, revoke, or deny a license or renewal of a license of an organization or a promoter for violation of this article or rules of the commission promulgated in accordance with this article. The commission is authorized to fine a licensed organization or promoter for violation of this article or rules of the commission promulgated in accordance with this article.

(b) The commission is authorized to suspend, revoke, or deny issuance of a permit for a show, match, contest, or exhibition issued in accordance with this article in the interest of the safety or health of the competitors or public, or for violation of this article or rules of the commission promulgated in accordance with this article. (Code 1981, § 43-4B-54, enacted by Ga. L. 2005, p. 984, § 12/SB 224.)

43-4B-55. Exemptions.

(a) Subject to the restriction set forth in Code Section 43-4B-53, the commission is authorized to exempt organizations from the requirements of licensure and permitting when the commission, in its discretion, deems the matches, contests, and exhibitions authorized or governed by the organization present little or no danger to the health and safety of the competitors and the public.

(b) In determining whether to exempt an organization from licensure and permitting requirements, the commission shall consider the following factors:

(1) Whether the organization requesting exemption has allowed any person who has ever pleaded guilty to, has entered a plea of nolo contendere to, or has been found guilty of a felony or crime of moral turpitude under the laws of this state or any offense that, had it occurred within this state, would constitute a felony or crime of moral turpitude under the laws of this state, within ten years of such conviction or plea, to act as a promoter for any match, contest, or exhibition that it has sanctioned, governed, licensed, or authorized or whether it has authorized, retained, employed, or otherwise allowed such a person to act or serve as its employee or representative in

connection with any match that it has sanctioned, governed, licensed, or authorized. For purposes of this Code section, a conviction shall include but not be limited to adjudication under Article 3 of Chapter 8 of Title 42. Should the commission determine that a sanctioning organization has allowed, retained, employed, or otherwise authorized such a person to act in any of the aforementioned capacities, the organization shall not be exempted from the requirements of licensure;

(2) Whether the matches, contests, and exhibitions are conducted in the course of teaching wrestling or a martial art and are closely supervised by well-trained teachers;

(3) Whether an admission fee is charged for viewing the matches, contests, or exhibitions;

(4) Whether the matches, contests, or exhibitions offer a commercial advantage to the organization;

(5) Whether the matches, contests, or exhibitions are conducted in a manner to minimize the danger of injury;

(6) Whether the commission's information about previous matches, contests, or exhibitions conducted by the organization indicates that the matches, contests, or exhibitions are likely to result in injury; and

(7) Other factors deemed by the commission as indicia of danger to health or safety and set out in rules promulgated by the commission. (Code 1981, § 43-4B-55, enacted by Ga. L. 2005, p. 984, § 12/SB 224.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, a semicolon was substituted for a period at the end of paragraph (b)(1).

CHAPTER 5

ATHLETIC TRAINERS

Sec.		Sec.	
43-5-1.	Definitions.	43-5-8.	Qualifications of applicants; reciprocity.
43-5-2.	Creation of board; composition; qualifications of members; terms of office; oath of members; vacancies.	43-5-9.	Application for licenses; issuance of licenses to qualified applicants; term of license; continuing education.
43-5-3.	Election of officers; appointment of committees; meetings.	43-5-10.	Grounds for denial, suspension, or revocation of licenses.
43-5-4.	Maintenance of record of board's proceedings by division director.	43-5-11.	Hearing before board when license denied, revoked, or suspended; reissuance of license.
43-5-5.	Reimbursement of board members.	43-5-12.	Appeal from board's order.
43-5-6.	General powers and duties of board.	43-5-13.	Exceptions to operation of chapter.
43-5-7.	License requirement for persons engaged as athletic trainers.	43-5-14.	Penalty.
		43-5-15.	Termination [Repealed].

Administrative rules and regulations. — Athletic trainer, Official Compilation of the Rules and Regulations of the

State of Georgia, Georgia Board of Athletic Trainers, Chapter 53-1 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S.,

Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

43-5-1. Definitions.

(1) "Athletic injury" means any injury sustained by a person as a result of such person's participation in exercises, sports, games, or recreational activities, or any activities requiring physical strength, agility, flexibility, range of motion, speed, or stamina without respect to where or how the injury occurs. Nothing in this paragraph shall be

construed to expand the scope of practice of an athletic trainer beyond the determination of the advising and consenting physician as provided for in paragraph (2) of this Code section.

(2) "Athletic trainer" means a person with specific qualifications, as set forth in Code Sections 43-5-7 and 43-5-8 who, upon the advice and consent of a physician, carries out the practice of prevention, recognition, evaluation, management, disposition, treatment, or rehabilitation of athletic injuries; and, in carrying out these functions, the athletic trainer is authorized to use physical modalities, such as heat, light, sound, cold, electricity, or mechanical devices related to prevention, recognition, evaluation, management, disposition, rehabilitation, and treatment. Nothing in this Code section shall be construed to require licensure of elementary or secondary school teachers, coaches, or authorized volunteers who do not hold themselves out to the public as athletic trainers.

(3) "Board" means the Georgia Board of Athletic Trainers. (Ga. L. 1977, p. 1123, § 1; Ga. L. 1991, p. 750, § 1; Ga. L. 2005, p. 473, § 1/HB 217; Ga. L. 2008, p. 1112, § 12/HB 1055.)

Administrative rules and regulations. — Definitions, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Athletic Trainers, Chapter 53-2.

Law reviews. — For survey article on workers' compensation law, see 60 Mercer L. Rev. 433 (2008).

JUDICIAL DECISIONS

O.C.G.A. § 43-5-1 did not apply to make a physical therapy company liable in an action against the company for permitting a physical trainer in the company's employ to give advice regarding care of an ingrown toenail without advice and consent of a physician; a physical therapy

group is not required to have a physician on staff and the physical trainer was acting as an athletic trainer for a high school at the time. *Georgia Physical Therapy, Inc. v. McCullough*, 219 Ga. App. 744, 466 S.E.2d 635 (1995).

OPINIONS OF THE ATTORNEY GENERAL

Scope of practice. — Licensed athletic trainers may only perform their injury preventive and rehabilitative functions when specific statutory conditions have been met. 1984 Op. Att'y Gen. No. 84-72.

While treatments may be administered in the setting of a private clinic such as a physical therapy or sports medicine

group, an athletic trainer may not administer treatments to persons other than athletes on the team that employs that athletic trainer, nor may the athletic trainer administer these treatments without the advice and consent of the team physician. 1984 Op. Att'y Gen. No. 84-72.

RESEARCH REFERENCES

ALR. — Medical malpractice liability of sports medicine care providers for injury to, or death, of athlete, 33 ALR5th 619.

43-5-2. Creation of board; composition; qualifications of members; terms of office; oath of members; vacancies.

(a) The Georgia Board of Athletic Trainers, composed of four members who shall be appointed by the Governor and confirmed by the Senate, is created. To qualify as a member, a person must be a citizen of the United States and a resident of this state. Two members must be athletic trainers, one member must be a physician licensed by the state, and one member shall be appointed from the public at large and shall have no connection whatsoever with the practice or profession of athletic training.

(b) Members shall serve for a term of office of six years. All terms shall expire on January 31 of even-numbered years. In making the initial appointments, the Governor shall appoint one member for a term expiring in 1978, one member in 1980, and one member for a term expiring in 1982. The initial appointment for the member appointed from the public at large shall expire January 31, 1986.

(c) Each appointee to the board shall qualify by taking an oath of office within 15 days from the date of his appointment. On presentation of the oath, the Secretary of State shall issue commissions to appointees as evidence of their authority to act as members of the board.

(d) In the event of death, resignation, or removal of any member, the vacancy of the unexpired term shall be filled by the Governor in the same manner as other appointments. (Ga. L. 1977, p. 1123, § 2; Ga. L. 1980, p. 55, § 1; Ga. L. 1991, p. 750, § 2.)

43-5-3. Election of officers; appointment of committees; meetings.

(a) The board shall elect a chairman and a vice-chairman from its members for a term of one year and may appoint such committees as it considers necessary to carry out its duties.

(b) The board shall meet at least twice each year. Additional meetings may be held on the call of the chairman or at the written request of any two members of the board. (Ga. L. 1977, p. 1123, § 3; Ga. L. 1980, p. 55, § 1.)

43-5-4. Maintenance of record of board's proceedings by division director.

The division director shall keep a record of the board's proceedings in a book maintained for that purpose. (Ga. L. 1977, p. 1123, § 4; Ga. L. 2000, p. 1706, § 19.)

43-5-5. Reimbursement of board members.

Each member of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2. (Ga. L. 1977, p. 1123, § 6.)

43-5-6. General powers and duties of board.

(a) The board is authorized to promulgate and adopt rules and regulations consistent with this chapter which are necessary for the performance of its duties.

(b) The board shall prescribe application forms for license applications.

(c) The board shall establish guidelines for athletic trainers in the state and prepare and conduct an examination for applicants for a license.

(d) The board shall adopt an official seal and the form of a license certificate of suitable design. (Ga. L. 1977, p. 1123, § 5.)

Administrative rules and regulations. — Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Board of Athletic Trainers, Chapter 53-1 et seq.

43-5-7. License requirement for persons engaged as athletic trainers.

No person shall hold himself or herself out as an athletic trainer or perform the services of an athletic trainer, as defined in this chapter, without first obtaining a license under this chapter; provided, however, that nothing in this chapter shall be construed to prevent any person from serving as a student-trainer, assistant-trainer, or any similar position if such service is not primarily for compensation and is carried out under the supervision of a physician or a licensed athletic trainer. (Ga. L. 1977, p. 1123, § 8; Ga. L. 2002, p. 1125, § 1; Ga. L. 2005, p. 473, § 2/HB 217.)

Administrative rules and regulations. — Licensure by examination, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Athletic Trainers, Chapter 53-3.

RESEARCH REFERENCES

ALR. — Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 ALR 834.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

43-5-8. Qualifications of applicants; reciprocity.

(a) An applicant for an athletic trainer's license must have met the athletic training curriculum requirements of a college or university approved by the board and give proof of graduation.

(b) The board shall be authorized to grant a license, without examination, to any qualified athletic trainer holding a license in another state if such other state recognizes licensees of this state in the same manner.

(c) The board may grant a license without examination to any qualified applicant who holds a certification from the National Athletic Trainers Board of Certification.

(d) Any person who was issued a license prior to July 1, 2004, shall remain qualified for licensure, notwithstanding the requirement for proof of graduation in subsection (a) of this Code section, so long as the license remains current. (Ga. L. 1977, p. 1123, § 9; Ga. L. 1985, p. 985, § 1; Ga. L. 1989, p. 454, § 1; Ga. L. 2002, p. 1125, § 2.)

Cross references. — Cooperation between Georgia and other states generally, T. 28, C. 6.

Administrative rules and regula-

tions. — Licensure by reciprocity, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Athletic Trainers, Chapter 53-4.

43-5-9. Application for licenses; issuance of licenses to qualified applicants; term of license; continuing education.

(a) An applicant for an athletic trainer's license must submit an application to the board on forms prescribed by the board and submit the examination fee required by this chapter.

(b) The applicant is entitled to an athletic trainer's license if he possesses the qualifications enumerated in Code Section 43-5-8, satisfactorily completes an examination approved by the board, pays the required license fee, and has not committed an act which constitutes grounds for denial of a license under Code Section 43-5-10.

(c) Licenses issued by the board shall expire biennially. As a condition of license renewal, the board shall be authorized to require licensees to complete continuing education courses approved by the board. (Ga. L. 1977, p. 1123, § 10; Ga. L. 1983, p. 444, § 1; Ga. L. 1985, p. 985, § 2; Ga. L. 1989, p. 454, § 2.)

RESEARCH REFERENCES

ALR. — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

43-5-10. Grounds for denial, suspension, or revocation of licenses.

The board may refuse to issue a license to an applicant or may suspend or revoke the license of any licensee if he has:

- (1) Been convicted of a felony or misdemeanor involving moral turpitude, the record of conviction being conclusive evidence of conviction;
- (2) Secured the license by fraud or deceit; or
- (3) Violated or conspired to violate this chapter or rules and regulations issued pursuant to this chapter. (Ga. L. 1977, p. 1123, § 12.)

43-5-11. Hearing before board when license denied, revoked, or suspended; reissuance of license.

(a) Any person whose application for a license is denied is entitled to a hearing before the board if he submits a written request to the board.

(b) Proceedings for revocation or suspension of a license shall be commenced by filing charges with the board in writing and under oath. The charges may be made by one person or persons.

(c) The division director shall fix a time and place for a hearing and shall cause a written copy of the charges or reason for denial of a license, together with a notice of the time and place fixed for hearing, to be served on the applicant requesting the hearing or licensee against whom the charges have been filed at least 20 days prior to the date set for the hearing. Service of charges and notice of hearing may be given by certified mail or statutory overnight delivery to the last known address of the licensee or applicant.

(d) At the hearing, the applicant or licensee has the right to appear either personally or by counsel, or both, to produce witnesses, to have subpoenas issued by the board, and to cross-examine the opposing or adverse witnesses.

(e) The board is not bound by strict rules of procedure or by the laws of evidence in the conduct of the proceedings, but the determination shall be founded upon sufficient legal evidence to sustain it.

(f) The board shall determine the charges on their merits and enter an order in a permanent record setting forth the findings of fact and law

and the action taken. A copy of the order of the board shall be mailed to the applicant or licensee at his last known address by certified mail or statutory overnight delivery.

(g) On application, the board may reissue a license to a person whose license has been canceled or revoked, but the application may not be made prior to the expiration of a period of six months after the order of cancellation or revocation has become final; and the application shall be made in the manner and form as the board may require. (Ga. L. 1977, p. 1123, § 13; Ga. L. 2000, p. 1589, § 3; Ga. L. 2000, p. 1706, § 19.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to sub-

sections (c) and (f) are applicable with respect to notices delivered on or after July 1, 2000.

RESEARCH REFERENCES

ALR. — Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 ALR 1388.

43-5-12. Appeal from board's order.

(a) A person whose application for a license has been refused or whose license has been canceled, revoked, or suspended by the board may take an appeal, within 30 days after the order is entered, to any court of competent jurisdiction.

(b) A case reviewed under this Code section shall proceed in the superior court by trial de novo. Appeal from the judgment of the superior court lies as in other civil cases. (Ga. L. 1977, p. 1123, § 14.)

Administrative rules and regulations. — Procedural rules, Official Compilation of the Rules and Regulations of

the State of Georgia, Georgia Board of Athletic Trainers, Chapter 53-9.

43-5-13. Exceptions to operation of chapter.

(a) Nothing in this chapter shall be construed to authorize the practice of medicine by any person not licensed by the Georgia Composite Medical Board.

(b) This chapter does not apply to physicians licensed by the Georgia Composite Medical Board; to dentists, duly qualified and registered under the laws of this state who confine their practice strictly to dentistry; nor to licensed optometrists who confine their practice strictly to optometry as defined by law; nor to occupational therapists; nor to nurses who practice nursing only; nor to duly licensed chiropractors or podiatrists who confine their practice strictly to chiropractic or podiatry as defined by law; nor to physical therapists who confine their

practice to physical therapy; nor shall any provisions of this chapter be construed so as to limit or prevent any person duly licensed under the laws of this state to practice the profession for which he or she was licensed. (Ga. L. 1977, p. 1123, § 17; Ga. L. 2009, p. 859, § 2/HB 509.)

The 2009 amendment, effective July 1, 2009, substituted “Georgia Composite Medical Board” for “Composite State Board of Medical Examiners” in subsections (a) and (b).

43-5-14. Penalty.

Any person who violates Code Section 43-5-7 shall be guilty of a misdemeanor of a high and aggravated nature. (Ga. L. 1977, p. 1123, § 15; Ga. L. 2003, p. 422, § 2.)

43-5-15. Termination.

Repealed by Ga. L. 1992, p. 3317, § 5, effective July 1, 1992.

Editor’s notes. — This Code section was based on Ga. L. 1982, p. 430, §§ 1, 2; Ga. L. 1983, p. 444, § 2; and Ga. L. 1989, p. 454, § 3.

CHAPTER 6

AUCTIONEERS

Sec.		Sec.	
43-6-1.	Definitions.	43-6-12.1.	Proof of residence.
43-6-2.	Creation of commission; composition; terms of office; qualifications of members.	43-6-13.	License fees; effect of nonpayment of checks submitted as fee.
43-6-3.	Selection of chairman; rules and regulations; meetings.	43-6-14.	Affixing seal to licenses; delivery of licenses; display of licenses; pocket card; branch office licenses.
43-6-4.	Reimbursement of commission members.	43-6-14.1.	Carrying license identification card required.
43-6-5.	Commission reports to Governor and General Assembly [Repealed].	43-6-15.	Surety bond [Repealed].
43-6-6.	(Effective until January 1, 2013. See note.) Seal; receipt of copies of records and papers as evidence.	43-6-16.	Grounds for refusal to issue license.
43-6-6.	(Effective January 1, 2013. See note.) Seal.	43-6-17.	Procedure upon nonacceptance of applications.
43-6-7.	Adoption of rules and regulations.	43-6-18.	Grounds for revocation or suspension of licenses and censure of licensees.
43-6-8.	Authority to regulate issuance of licenses, to revoke or suspend licenses, and to censure licensees.	43-6-18.1.	Inspector.
43-6-9.	License requirement for auctioneers and apprentice auctioneers; registration for companies conducting auctions; restrictions as to sales of real property.	43-6-18.2.	Sanctions.
43-6-10.	Application by person for license.	43-6-19.	Hearings regarding revocation or suspension of licenses or censure of licensees; appeals.
43-6-11.	Qualifications of applicants.	43-6-20.	Effect of revocation of auctioneer's license on licenses of apprentice auctioneers.
43-6-11.1.	Application by company for registration; exemptions; trust accounts.	43-6-21.	Notification of change of address; effect of apprentice's leaving auctioneer.
43-6-11.2.	Expiration of licenses; waiver of continuing education requirement; rules and regulations.	43-6-22.	Prerequisite for bringing action for compensation; power of commission to sue for violation.
43-6-12.	Reciprocity; nonresident license requirement; designation of agents for service of process.	43-6-22.1.	Auctioneers education, research, and recovery fund.
		43-6-23.	Injunctions.
		43-6-24.	Exceptions to operation of chapter.
		43-6-24.1.	Liabilities of licensed auctioneer not relieved.
		43-6-25.	Penalty.
		43-6-25.1.	Local regulations and licensing.
		43-6-26.	Termination [Repealed].

Cross references. — Regulation of livestock auctions by Commissioner of Agriculture, § 4-6-42 et seq. Judicial sales,

§ 9-13-140 et seq. Auctions for sale of flue-cured leaf tobacco, § 10-4-100 et seq. **Administrative rules and regula-**

tions. — Organization, Official Compilation of the Rules and Regulations of the

State of Georgia, Georgia Auctioneers Commission, Chapter 55-1.

OPINIONS OF THE ATTORNEY GENERAL

Auction sale by students of Georgia Tech, proceeds going to charity, is not forbidden by Georgia law. 1962 Op.

Att'y Gen. p. 593 (decided prior to enactment of this chapter).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49

et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

Regulations affecting auctions or auctioneers, 31 ALR 299; 39 ALR 773; 111 ALR 473.

Effect on auction sale of by-bidding or puffing, 46 ALR 122.

Title to goods, as between purchaser from, and one who entrusted them to, auctioneer, 36 ALR2d 1362.

Withdrawal of property from auction sale, 37 ALR2d 1049.

Regulation and licensing of jewelry auctions, 53 ALR2d 1433.

Auctioneer's action for commissions against seller, 38 ALR4th 170.

Liability of auctioneer under doctrine of strict products liability, 83 ALR4th 1188.

43-6-1. Definitions.

As used in this chapter, the term:

(1) "Absolute auction" shall mean that ownership and title of real or personal property offered at auction must be conveyed to the high bidder without reservation and without any competing bids of any type by the owner or an agent of the owner of the property.

(2) "Apprentice auctioneer" means any person who for compensation or valuable consideration, or otherwise, is employed, directly or indirectly, by an auctioneer to deal or engage in any auctioning activity and who is duly licensed under this chapter or any person who is not employed by an auctioneer and who conducts the business of auctioning in cases where gross sales do not exceed \$2,000.00 per auction and who is duly licensed under this chapter.

(3) "Auction business" or "business of auctioning" means the performing of any of the acts of an auctioneer or apprentice auctioneer, including bid calling for a fee, commission, or any other valuable consideration or with the intention or expectation of receiving the same by means of or by process of an auction or sale at auction or offering, negotiating, or attempting to negotiate a listing contract for the sale, purchase, or exchange of goods, chattels, merchandise, real or personal property, or any other commodity which lawfully may be kept or offered for sale.

(4) "Auction with reserve" shall mean that the seller reserves the right to refuse any and all bids.

(5) "Auctioneer" means any person who, for a fee, commission, or any other valuable consideration or with the intention or expectation of receiving the same by means of or by process of an auction or sale at auction, offers, negotiates, or attempts to negotiate a listing contract, sale, purchase, or exchange of goods, chattels, merchandise, real or personal property, or any other commodity which lawfully may be kept or offered for sale and has been duly licensed, as provided in this chapter.

(6) "Commission" means the Georgia Auctioneers Commission.

(7) "Company" means an association, partnership, limited liability company, corporation, or sole proprietorship and shall also include the officers, directors, members, and employees of such entities.

(8) "Goods" means any chattel, goods, merchandise, real or personal property, or commodities of any form or type which lawfully may be kept or offered for sale.

(9) "Person or persons" means an individual.

(10) "Ringperson" means any person employed directly by an auctioneer or auction company responsible for a sale who assists the auctioneer in the conduct of an auction, provided that such person shall not be permitted to call or chant a bid or negotiate a listing contract. (Code 1933, § 84-301A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1987, p. 596, § 1; Ga. L. 1988, p. 13, § 43; Ga. L. 1989, p. 1409, § 1; Ga. L. 1990, p. 576, § 1; Ga. L. 1993, p. 123, § 21; Ga. L. 1993, p. 1030, § 1; Ga. L. 1996, p. 657, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Auctions and Auctioneers, § 1 et seq.

C.J.S. — 7A C.J.S. Auctions and Auctioneers, § 1 et seq.

43-6-2. Creation of commission; composition; terms of office; qualifications of members.

(a) The Georgia Auctioneers Commission is created under the Secretary of State and the division director.

(b) The commission shall be composed of six members, each of whom shall be appointed by the Governor, with the approval of the Secretary of State, and confirmed by the Senate. Appointments shall be for a term of five years, to end on the anniversary date of original appointments, except appointments to fill a vacancy which shall be for the unexpired term only.

(c) Five members of the commission shall be licensed auctioneers who shall have been residents of this state and actively engaged in the auctioneering business for at least five years. One member shall be a consumer advocate and a resident of this state and shall have no connection whatsoever with the practice or profession of auctioneering. (Code 1933, § 84-305A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1984, p. 1084, § 1; Ga. L. 1996, p. 657, § 2; Ga. L. 2000, p. 1706, § 19.)

43-6-3. Selection of chairman; rules and regulations; meetings.

(a) The commission shall organize by selecting from its members a chairman and may do all things necessary and convenient to carry this chapter into effect and, from time to time, may promulgate necessary rules and regulations to carry out this chapter.

(b) The commission shall meet as necessary and shall remain in session as long as the chairman deems it necessary to give full consideration to the business before the commission. (Code 1933, § 84-305A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1990, p. 576, § 2; Ga. L. 1996, p. 657, § 3.)

43-6-4. Reimbursement of commission members.

Each member of the commission shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2. (Code 1933, § 84-305A, enacted by Ga. L. 1975, p. 53, § 1.)

43-6-5. Commission reports to Governor and General Assembly.

Reserved. Repealed by Ga. L. 1990, p. 576, § 3, effective March 30, 1990.

Editor's notes. — This Code section was based on Code 1933, § 84-305A, enacted by Ga. L. 1975, p. 53, § 1.

43-6-6. (Effective until January 1, 2013. See note.) Seal; receipt of copies of records and papers as evidence.

The commission shall adopt a seal, which may be either an engraved or ink stamp seal, with the words "State Auctioneers Commission, State of Georgia" and such other devices as the commission may desire included thereon, by which it shall authenticate the acts of the commission. Copies of all records and papers in the office of the commission certified by the signature of the commission chairman and the seal of the commission shall be received in evidence in all cases equally and with like effect as the originals. (Code 1933, § 84-306A, enacted by Ga. L. 1975, p. 53, § 1.)

Editor's notes. — Code Section 43-6-6 and the second version becomes effective is set out twice in this Code. The first version is effective until January 1, 2013, on that date.

RESEARCH REFERENCES

Am. Jur. 2d. — 68 Am. Jur. 2d, Seals, § 1 et seq.

43-6-6. (Effective January 1, 2013. See note.) Seal.

The commission shall adopt a seal, which may be either an engraved or ink stamp seal, with the words "State Auctioneers Commission, State of Georgia" and such other devices as the commission may desire included thereon, by which it shall authenticate the acts of the commission. (Code 1933, § 84-306A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 2011, p. 99, § 65/HB 24.)

The 2011 amendment, effective January 1, 2013, deleted the former last sentence of this Code section which read: "Copies of all records and papers in the office of the commission certified by the signature of the commission chairman and the seal of the commission shall be received in evidence in all cases equally and with like effect as the originals." See editor's note for applicability.

Editor's notes. — Code Section 43-6-6 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

Ga. L. 2011, p. 99, § 101, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

43-6-7. Adoption of rules and regulations.

The commission is authorized to adopt rules and regulations relating to the professional conduct of licensees, a code of ethics, and the administration of this chapter. Such rules and regulations shall not apply to and shall not set schedules of fees or commissions for the

services of the licensees. (Code 1933, § 84-305A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1993, p. 1030, § 2.)

Administrative rules and regulations. — Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Auctioneers Commission, Chapter 55-1 et seq.

43-6-8. Authority to regulate issuance of licenses, to revoke or suspend licenses, and to censure licensees.

Except as provided in Code Section 43-1-4, the commission shall have the power to regulate the issuance of licenses, to revoke or suspend licenses issued under this chapter, and to censure licensees for any violation of this chapter. (Code 1933, § 85-308A, enacted by Ga. L. 1975, p. 53, § 1.)

43-6-9. License requirement for auctioneers and apprentice auctioneers; registration for companies conducting auctions; restrictions as to sales of real property.

(a) It shall be unlawful for any person, directly or indirectly, to engage in, conduct, advertise, hold himself out as engaging in or conducting the business of, or act in the capacity of, an auctioneer or apprentice auctioneer within this state without first obtaining a license as an auctioneer or apprentice auctioneer, as provided in this chapter, unless he is exempted from obtaining a license under Code Section 43-6-24.

(b) It shall be unlawful for any licensed auctioneer or apprentice auctioneer to act in such capacity in the sale of real property unless such auctioneer or apprentice auctioneer shall also be licensed as a real estate broker, associate broker, or salesperson under Chapter 40 of this title; provided, however, that any auctioneer or apprentice auctioneer who was licensed as such by this state prior to July 1, 1978, and who, prior to December 31, 1984, submits proof to the commission that he has been auctioning real property for five years or more immediately prior to the date of application shall not be required to meet the provisions of this subsection but such person shall not thereby be construed to be a real estate broker, associate broker, or salesperson under Chapter 40 of this title.

(c) It shall be unlawful for any company, directly or indirectly, to engage in, conduct, advertise, hold itself out as engaging in or conducting the business of auctioning without first being registered by the commission, unless such company is exempted from obtaining a license pursuant to Code Section 43-6-24. (Code 1933, § 84-302A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1984, p. 1084, § 2; Ga. L. 1987, p. 596, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1987, “this title” was substituted twice for “Title 43” in subsection (b).

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Dealer may auction wrecked or reparable motor vehicles without being registered. — Licensed used motor vehicle parts dealer may auction wrecked or reparable motor vehicles without also being registered with the Georgia Auctioneers Commission as auctioning is incidental to the practice of a salvage pool dealer. However, a dealer may not auction items other than wrecked or reparable motor vehicles without an auction company license. 1989 Op. Att’y Gen. No. 89-58.

Licensed auctioneers who sell used motor vehicles on consignment must also be licensed as used car dealers unless such sales are made by a used car dealer or a financial institution. Auction companies which auction used motor vehicles on consignment must also be registered as used car dealers if such sales are made to independent motor vehicle dealers or to individual consumers. 1991 Op. Att’y Gen. No. 91-15.

RESEARCH REFERENCES

ALR. — Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

43-6-10. Application by person for license.

Any person desiring to act as an auctioneer or apprentice auctioneer must file an application for a license with the commission. The application shall be in such form and detail as the commission shall prescribe, setting forth the following:

- (1) The name and address of the applicant or the name under which he or she intends to conduct business; if the applicant is a partnership or limited liability company, the name and residence address of each member thereof and the name under which the partnership or limited liability company business is to be conducted; and, if the applicant is a corporation, the name and address of each of its principal officers;
- (2) The place or places, including the municipality, with the street and street number, if any, where the business is to be conducted; and
- (3) Such other information as the commission shall require. (Code 1933, § 84-309A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1993, p. 123, § 22.)

Administrative rules and regulations. — Application for licensure, Official Compilation of the Rules and Regulations

of the State of Georgia, Georgia Auctioneers Commission, Chapter 55-3.

43-6-11. Qualifications of applicants.

(a) No auctioneer's or apprentice auctioneer's license shall be issued to any person who has not attained the age of 18 years, nor to any person who is not a resident of this state unless he has fully complied with Code Section 43-6-12, nor to any person who is not a citizen or has not filed his intent to become a citizen of the United States.

(b) Each applicant for an auctioneer's or apprentice auctioneer's license shall be required to pass an examination in a form prescribed by the commission.

(c) Each applicant for licensure as an auctioneer or apprentice auctioneer must prove to the commission that he is reputable, trustworthy, honest, and competent to transact the business of an auctioneer or of an apprentice auctioneer in such a manner as to safeguard the interest of the public.

(d) Each applicant for licensure as an auctioneer shall have successfully graduated from an accredited high school or obtained a GED and have graduated from an auctioneers school approved by the commission prior to making an application for an auctioneer's license.

(e) On and after December 31, 1995, no apprentice auctioneer's license shall be issued or renewed. (Code 1933, § 84-311A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1979, p. 1268, § 2; Ga. L. 1982, p. 3, § 43; Ga. L. 1982, p. 1686, §§ 1, 2; Ga. L. 1989, p. 1409, § 2; Ga. L. 1991, p. 801, § 1; Ga. L. 1993, p. 1030, § 3; Ga. L. 1996, p. 657, § 4; Ga. L. 2011, p. 752, § 43/HB 142.)

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, deleted former subsection (e), which read: "No apprentice auctioneer may use an auction where gross sales did not exceed \$2,000.00 for

the purpose of qualifying for licensure as an auctioneer under paragraph (1) of subsection (d) of this Code section." and redesignated former subsection (d.1) as present subsection (e).

43-6-11.1. Application by company for registration; exemptions; trust accounts.

(a) No company shall be registered to engage in the business of auctioning unless such company furnishes to the commission:

(1) A completed application form as prescribed by the commission;

(2) Satisfactory evidence approved by the commission that the company employs or shall employ an auctioneer licensed under the provisions of this chapter to conduct any auctions in this state; and

(3) If such company is a foreign corporation, satisfactory evidence approved by the commission that such company is authorized to do

business in this state and is registered in accordance with Chapter 3 of Title 14.

(b) A company owned by or employing one or more full-time auctioneers licensed by the commission may be exempt from subsection (a) of this Code section, provided that such company is directly supervised by a licensed auctioneer.

(c) A company licensed under Chapter 47 and Chapter 48 of this title which engages in the business of auctioning on behalf of insurance companies and financial institutions shall not be subject to the requirements of paragraph (3) of Code Section 43-6-18.

(d) An auction company must maintain at all times an active trust account and register such account with the Georgia Auctioneers Commission. (Code 1981, § 43-6-11.1, enacted by Ga. L. 1987, p. 596, § 3; Ga. L. 1989, p. 1409, § 3; Ga. L. 1991, p. 801, § 2; Ga. L. 1996, p. 657, § 5.)

Administrative rules and regulations. — Company registration, Official Compilation of the Rules and Regulations

of the State of Georgia, Georgia Auctioneers Commission, Chapter 55-7.

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Person or company possessing both a used motor vehicle parts dealer's license and an auction company's li-

cense must maintain separate bonds under each license. 1989 Op. Att'y Gen. No. 89-58.

43-6-11.2. Expiration of licenses; waiver of continuing education requirement; rules and regulations.

(a) Licenses for auctioneers shall expire biennially as provided in Code Section 43-1-4. The commission shall be authorized to require persons seeking renewal of an auctioneer's license under this chapter to complete commission approved continuing education of not more than eight hours biennially.

(b) The commission shall be authorized to waive the continuing education requirement in cases of hardship, disability, or illness or under such other circumstances as the commission deems appropriate.

(c) The commission shall be authorized to promulgate rules and regulations to implement and ensure compliance with the requirements of this Code section.

(d) This Code section shall apply to each biennial renewal cycle which begins after the 1990-1991 renewal. (Code 1981, § 43-6-11.2, enacted by Ga. L. 1991, p. 799, § 1.)

43-6-12. Reciprocity; nonresident license requirement; designation of agents for service of process.

(a) Any resident of another state who holds a current license as an auctioneer or an apprentice auctioneer under the laws of any other state having requirements similar to those in this chapter may, at the discretion of the commission, be issued a license to practice as an auctioneer or an apprentice auctioneer in this state without written examination upon the payment of the fees as required by the commission.

(b) Any resident of another state which does not have a law regulating the licensing of auctioneers but who holds a current and valid license in a state which has a reciprocal licensing agreement with Georgia may, at the discretion of the commission, be issued a license to practice as an auctioneer in this state without examination upon the payment of a fee as required by the commission.

(c) Prior to the issuance of a license to a nonresident auctioneer or apprentice auctioneer, such nonresident shall file with the commission a designation in writing that appoints the commission or a deputy to be designated by it to act as the licensee's agent upon whom all judicial and other process or legal notices directed to such licensee may be served. Service upon the agent so designated shall be equivalent to personal service upon the licensee. Copies of such appointment, certified by the commission chairman, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. In such written designation, the licensee shall agree that any lawful process against the licensee which is served upon such agent shall be of the same legal force and validity as if served upon the licensee and that the authority shall continue in force so long as any liability remains outstanding in this state. Upon the receipt of all such process or notices, the commission or the deputy as designated by it shall immediately mail a copy of the same by certified mail or statutory overnight delivery to the last known business address of the licensee. (Code 1933, § 84-314A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1979, p. 1268, § 3; Ga. L. 1987, p. 596, § 4; Ga. L. 1988, p. 13, § 43; Ga. L. 1991, p. 799, § 2; Ga. L. 1993, p. 1030, § 4; Ga. L. 2000, p. 1589, § 3.)

Cross references. — Cooperation between Georgia and other states generally, T. 28, C. 6.

Editor's notes. — Ga. L. 2000, p. 1589,

§ 16, not codified by the General Assembly, provides that the amendment to subsection (c) is applicable with respect to notices delivered on or after July 1, 2000.

43-6-12.1. Proof of residence.

In order for an applicant to obtain an auctioneer's license, such applicant must show proof of a residence. (Code 1981, § 43-6-12.1, enacted by Ga. L. 1996, p. 657, § 6.)

43-6-13. License fees; effect of nonpayment of checks submitted as fee.

(a) The division director, at the time an application for licensure is submitted, shall collect from an applicant a fee in an amount established by the commission. The commission may establish separate schedules of fees for such licenses depending on whether the applicant begins to do business prior to or after the issuance of any such license.

(b) After the issuance of the first license to an applicant, such license shall cover the remaining period of the biennium.

(c) The auctioneer's biennial license fee shall be an amount established by the commission and the apprentice auctioneer's biennial license fee shall be an amount established by the commission. This Code section shall not obviate any other fees or conditions required to maintain such license in accordance with this chapter.

(d) Any check presented to the division director as a fee for either an original or renewal license which is returned unpaid shall be cause for revocation or denial of a license.

(e) Notwithstanding any other fee prescribed in this chapter, a company shall be required to pay registration and renewal fees in an amount established by the commission. (Code 1933, § 84-312A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1984, p. 22, § 43; Ga. L. 1987, p. 596, § 5; Ga. L. 1991, p. 799, § 3; Ga. L. 2000, p. 1706, § 19; Ga. L. 2010, p. 266, § 13/SB 195.)

The 2010 amendment, effective May 20, 2010, in the middle of subsection (d), deleted "or for examination for license," following "renewal license" and deleted a comma following "unpaid".

43-6-14. Affixing seal to licenses; delivery of licenses; display of licenses; pocket card; branch office licenses.

Each license shall have placed thereon the seal of the commission. The license of each auctioneer or apprentice auctioneer shall be delivered or mailed to his place of business and shall be displayed conspicuously at all times in the office of the licensee. The commission shall prepare and deliver a pocket card certifying that the person whose name appears thereon is a licensed auctioneer or apprentice auctioneer, as the case may be, stating the period of time for which fees have been

paid and including, on apprentice auctioneers' cards only, the name and address of the auctioneer for whom such apprentice auctioneer is acting. If an auctioneer maintains more than one place of business within the state, a branch office license shall be issued to such auctioneer for each branch office so maintained by him upon the payment of a biennial fee in an amount established by the commission; and the branch office license shall be conspicuously displayed in each branch office. (Code 1933, § 84-316A, enacted by Ga. L. 1975, p. 53, § 1.)

43-6-14.1. Carrying license identification card required.

All licensees must carry on their person, when participating in the auctioneering business in any capacity, their Georgia auctioneer's license identification card and must present such card upon demand by any official of the State of Georgia. (Code 1981, § 43-6-14.1, enacted by Ga. L. 1996, p. 657, § 7.)

43-6-15. Surety bond.

Reserved. Repealed by Ga. L. 1989, p. 1409, § 4, effective July 1, 1989.

Editor's notes. — This Code section was based on Code 1933, § 84-321A, enacted by Ga. L. 1975, p. 53, § 1.

43-6-16. Grounds for refusal to issue license.

(a) Licenses shall be granted only to persons who bear a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of auctioneer or apprentice auctioneer in such manner as to safeguard the interest of the public and only after satisfactory proof of such qualifications has been presented to the commission. The commission shall grant a license to a corporation, limited liability company, or partnership only if the stockholder, member, or partner having a controlling interest therein bears a good reputation for honesty, trustworthiness, and integrity.

(b) Where an applicant has been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or other like offense or offenses or has been convicted of any other crime in a court of competent jurisdiction of this or any other state, district, or territory of the United States or of a foreign country, such untrustworthiness of the applicant and the conviction, in itself, may be a sufficient ground for refusal of a license.

(c) Where an applicant has made a false statement of material fact on his application, such false statement, in itself, may be sufficient ground for refusal of a license.

(d) Grounds for suspension or revocation of a license, as provided for by this chapter, shall also be grounds for refusal to grant a license. (Code 1933, § 84-310A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1993, p. 123, § 23.)

RESEARCH REFERENCES

ALR. — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

43-6-17. Procedure upon nonacceptance of applications.

If the commission, after an application in proper form has been filed and accompanied by the proper fee, shall refuse to accept the application, the commission shall provide for a hearing for such applicant in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Any person who has exhausted all administrative remedies available within this chapter and who is aggrieved by a final decision in a contested case is entitled to judicial review in accordance with Chapter 13 of Title 50. (Code 1933, § 84-315A, enacted by Ga. L. 1975, p. 53, § 1.)

43-6-18. Grounds for revocation or suspension of licenses and censure of licensees.

The commission may, upon its own motion, and shall, upon the signed complaint in writing of any person, investigate the actions of any auctioneer or apprentice auctioneer and shall have power to censure such licensee or to revoke or suspend any license issued under this chapter whenever such license has been obtained by false or fraudulent representation or the licensee has been found guilty of any unfair trade practices, including, but not limited to, the following:

- (1) Making any substantial misrepresentation while describing any property, real or personal; using any false, deceptive, misleading, or untruthful advertising; or making any statements, either in person or through any form of advertising, which may create false or unjustified expectations of the services to be performed;

- (2) Pursuing a continued and flagrant course of misrepresentation or making false promises through agents or advertising an auction to be an absolute auction, but conducting it as an auction with reserve or otherwise;

(3) Failing to account for or remit, within 30 days unless otherwise provided by contract, any money belonging to others that comes into his or her possession, commingling funds of others with his or her own, or failing to keep such funds of others in an escrow or trustee account; provided, however, that the requirement of an escrow or trust account shall not apply to an apprentice auctioneer who conducts the business of auctioning where gross sales do not exceed \$2,000.00 per auction;

(4) Being convicted in a court of competent jurisdiction of this or any other state of a criminal offense involving moral turpitude or a felony;

(5) Violation of any rule or regulation or code of ethics promulgated by the commission;

(6) Any conduct of any auctioneer which demonstrates bad faith, dishonesty, incompetency, or untruthfulness;

(7) Any conduct of an auctioneer which demonstrates improper, fraudulent, or dishonest dealings;

(8) Having had any license to practice a business or profession revoked, suspended, annulled, or sanctioned, or otherwise having had any disciplinary action taken by any other licensing authority in this or any other state; or

(9) Knowingly making any misleading, false, or deceptive statement on any application for a license under this chapter. (Code 1933, § 84-318A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1989, p. 1409, § 5; Ga. L. 1993, p. 1030, § 5; Ga. L. 1996, p. 657, § 8.)

Cross references. — False or fraudulent advertising, § 10-1-420 et seq. Liability of auctioneer for sale of stolen horse or mule, § 10-1-530.

RESEARCH REFERENCES

ALR. — Liability of auctioneer or clerk to buyer as to title, condition, or quality of property sold, 80 ALR2d 1237. Practices forbidden by state deceptive trade practice and consumer protection acts, 89 ALR3d 449.

43-6-18.1. Inspector.

The commission shall have an inspector with full inspection rights and privileges for all auctions conducted in this state. This inspector shall have the right to inspect any activity or lack thereof which may be a violation of this chapter or any documents or records pertaining to auction activities and to report any and all such violations or any improper or unlicensed practice, including but not limited to trust account violations. (Code 1981, § 43-6-18.1, enacted by Ga. L. 1993, p. 1030, § 6; Ga. L. 1996, p. 657, § 9; Ga. L. 2008, p. 1112, § 13/HB 1055.)

Editor's notes. — Ga. L. 1993, p. 1030, former Code Section 43-6-18.1 as present § 6, effective July 1, 1993, redesignated Code Section 43-6-18.2.

43-6-18.2. Sanctions.

After notice and opportunity for hearing as provided in Code Section 43-6-19, the commission, in its discretion, may sanction, as provided in Code Section 43-1-19 and Code Section 43-6-18, a company registered or required to be registered in accordance with this chapter. (Code 1981, § 43-6-18.1, enacted by Ga. L. 1987, p. 596, § 6; Code 1981, § 43-6-18.2, as redesignated by Ga. L. 1993, p. 1030, § 6.)

43-6-19. Hearings regarding revocation or suspension of licenses or censure of licensees; appeals.

Before the commission shall censure a licensee or before revoking or suspending a license, it shall provide for a hearing for such holder of a license in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Any person who has exhausted all administrative remedies available within this chapter and who is aggrieved by a final decision in a contested case is entitled to judicial review in accordance with Chapter 13 of Title 50. (Code 1933, § 84-319A, enacted by Ga. L. 1975, p. 53, § 1.)

43-6-20. Effect of revocation of auctioneer's license on licenses of apprentice auctioneers.

The revocation of an auctioneer's license shall automatically suspend every apprentice auctioneer's license granted to any person by virtue of his employment by the auctioneer whose license has been revoked. The apprentice auctioneer may retain his license by transferring to the employment of another licensed auctioneer within 90 days. (Code 1933, § 84-320A, enacted by Ga. L. 1975, p. 53, § 1.)

43-6-21. Notification of change of address; effect of apprentice's leaving auctioneer.

(a) Should the auctioneer change his place of business, he shall notify the commission in writing within ten days of such change, and thereupon a new pocket card shall be granted to the auctioneer and to his apprentice auctioneers.

(b) When an apprentice auctioneer is discharged or terminates his employment with the auctioneer for any reason, it shall be the immediate duty of the auctioneer to deliver or mail by registered or certified mail or statutory overnight delivery to the commission the license of the apprentice auctioneer. It shall be unlawful for any apprentice auction-

eer to perform any of the acts contemplated by this chapter, either directly or indirectly under authority of his license, until the apprentice auctioneer receives a new license bearing the name and address of his new employer. No more than one license shall be issued to any apprentice auctioneer for the same period of time. (Code 1933, § 84-317A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, section (b) is applicable with respect to § 16, not codified by the General Assembly, provides that the amendment to sub- notices delivered on or after July 1, 2000.

43-6-22. Prerequisite for bringing action for compensation; power of commission to sue for violation.

(a) No person shall bring or maintain any action in the courts of this state for the collection of compensation for the performance of any of the acts mentioned in this chapter without alleging and proving that he was a duly licensed auctioneer or apprentice auctioneer at the time the alleged cause of action arose.

(b) The commission may bring an action for any violation of this chapter. (Code 1933, § 84-304A, enacted by Ga. L. 1975, p. 53, § 1.)

43-6-22.1. Auctioneers education, research, and recovery fund.

(a) The commission is authorized and directed to establish and maintain an auctioneers education, research, and recovery fund.

(b) The commission shall maintain a minimum balance of \$100,000.00 in the auctioneers education, research, and recovery fund from which any person, except bonding companies when they are not principals in an auction transaction, aggrieved by an act, representation, transaction, or conduct of a licensee which is in violation of this chapter or of the rules and regulations of the commission promulgated pursuant to this chapter, may recover, by order of any court having competent jurisdiction, actual or compensatory damages, not including interests and costs sustained by the act, representation, transaction, or conduct, provided that nothing shall be construed to obligate the fund for more than \$10,000.00 per transaction regardless of the number of persons aggrieved or parcels of real estate or lots of personal property involved in such transaction. In addition:

(1) The liability of the fund for the acts of a licensee, when acting as such, is terminated upon the issuance of court orders authorizing payments from the fund for judgments, or any unsatisfied portion of judgments, in an aggregate amount of \$20,000.00 on behalf of such licensee;

(2) A licensee acting as a principal or agent in an auction transaction has no claim against the fund; and

(3) No person who establishes a proper claim or claims under this Code section shall ever obtain more than \$10,000.00 from the fund.

(c) When any person makes application for an original license to practice as a licensee, that person shall pay, in addition to the original license fee, a fee in an amount established by the commission for deposit in the auctioneers education, research, and recovery fund.

(d)(1) No action for a judgment which subsequently results in an order for collection from the auctioneers education, research, and recovery fund shall be started later than two years from the accrual of the cause of action thereon. When any aggrieved person commences action for a judgment which may result in collection from the auctioneers education, research, and recovery fund, the aggrieved person shall notify the commission in writing, by certified mail or statutory overnight delivery, return receipt requested, to this effect at the time of the commencement of such action. The commission shall have the right to intervene in and defend any such action.

(2) When any aggrieved person recovers a valid judgment in any court of competent jurisdiction against any licensee under this chapter for any act, representation, transaction, or conduct which is in violation of this chapter or of the regulations promulgated pursuant to this chapter, or which is in violation of Chapter 47 of this title or of the regulations promulgated pursuant to Chapter 47 of this title, which act occurred on or after January 1, 1992, the aggrieved person may, upon termination of all proceedings, including reviews and appeals in connection with the judgment, file a verified claim in the court in which the judgment was entered and, upon ten days' written notice to the commission, may apply to the court for an order directing payment out of the auctioneers education, research, and recovery fund of the amount unpaid upon the judgment, subject to the limitations stated in this Code section.

(3) The court shall proceed upon such application in a summary manner and, upon the hearing thereof, the aggrieved person shall be required to show:

(A) That he is not a spouse of the judgment debtor or the personal representative of such spouse;

(B) That he has complied with all the requirements of this Code section;

(C) That he has obtained a judgment, as set out in paragraph (2) of this subsection, stating the amount thereof and the amount owing thereon at the date of the application; and that, in such action, he had joined any and all bonding companies which issued corporate surety bonds to the judgment debtors as principals and all other necessary parties;

(D) That he has caused to be issued a writ of execution upon such judgment and the officer executing the same has made a return showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment could be found or that the amount realized on the sale of them or of such of them as were found, under such execution, was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due to the judgment after application thereon of the amount realized;

(E) That he has caused the judgment debtor to make discovery under oath concerning his property, in accordance with Chapter 11 of Title 9, the "Georgia Civil Practice Act";

(F) That he has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment;

(G) That by such search he has discovered no personal or real property or other assets liable to be sold or applied or that he has discovered certain of them, describing them, owned by the judgment debtor and liable to be so applied and that he has taken all necessary action and proceedings for the realization thereof and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized; and

(H) That the following items, if any, as recovered by him have been applied to the actual or compensatory damages awarded by the court:

(i) Any amount recovered from the judgment debtor or debtors;

(ii) Any amount recovered from the bonding company or companies; or

(iii) Any amount recovered in out-of-court settlements as to particular defendants.

(4) Whenever the aggrieved person satisfies the court that it is not practical to comply with one or more of the requirements enumerated in subparagraphs (D), (E), (F), (G), and (H) of paragraph (3) of this subsection and that the aggrieved person has taken all reasonable steps to collect the amount of the judgment or the unsatisfied part thereof and has been unable to collect the same, the court may, in its discretion, dispense with the necessity for complying with such requirements.

(5) The court shall make an order directed to the commission requiring payment from the auctioneers education, research, and recovery fund of whatever sum it shall find to be payable upon the claim, pursuant to the provisions of and in accordance with the limitations contained in this Code section, if the court is satisfied, upon the hearing, of the truth of all matters required to be shown by the aggrieved person by paragraph (3) of this subsection and is satisfied that the aggrieved person has fully pursued and exhausted all remedies available to him for recovering the amount awarded by the judgment of the court.

(6) Should the commission pay from the auctioneers education, research, and recovery fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensee, the license of such licensee shall be automatically revoked upon the issuance of a court order authorizing payment from the auctioneers education, research, and recovery fund. If such license is that of a corporation, limited liability company, or partnership, the license of the supervising auctioneer of the corporation, limited liability company, or partnership shall automatically be revoked upon the issuance of a court order authorizing payment from the auctioneers education, research, and recovery fund. No such licensee shall be eligible to receive a new license until such licensee has repaid in full, plus interest at the rate of 6 percent per annum, the amount paid from the auctioneers education, research, and recovery fund on such licensee's account. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this subsection.

(7) If, at any time, the money deposited in the auctioneers education, research, and recovery fund is insufficient to satisfy any duly authorized claim or portion thereof, the commission shall, when sufficient money has been deposited in the auctioneers education, research, and recovery fund, satisfy such unpaid claims or portions thereof in the order that such claims or portions thereof were originally filed, plus accumulated interest at the rate of 4 percent per annum.

(e) The sums received by the commission pursuant to any provisions of this Code section shall be deposited into the state treasury and held in a special fund to be known as the "auctioneers education, research, and recovery fund" and shall be held by the commission in trust for carrying out the purposes of this Code section. These funds may be invested in any investments which are legal for domestic insurance companies under Articles 1 and 3 of Chapter 11 of Title 33, and the interest from these investments shall be deposited to the credit of the auctioneers education, research, and recovery fund and shall be available for the same purposes as all other money deposited in the auctioneers education, research, and recovery fund.

(f) It shall be unlawful for any person or his agent to file with the commission any notice, statement, or other document required under this Code section which is false, untrue, or contains any material misstatement of fact and any such filing shall constitute a misdemeanor.

(g) When the commission receives notice, as provided in subsection (d) of this Code section, the commission may enter an appearance, file an answer, appear at the court hearing, defend the action, or take whatever other action it may deem appropriate on behalf of and in the name of the defendant and take recourse through any appropriate method of review on behalf of and in the name of the defendant.

(h) When, upon the order of the court, the commission has paid from the auctioneers education, research, and recovery fund any sum to the judgment creditor, the commission shall be subrogated to all of the rights of the judgment creditor. The judgment creditor shall assign all his right, title, and interest in the judgment to the commission before any payment is made from the fund, and any amount and interest so recovered by the commission on the judgment shall be deposited in the fund. If the total amount collected on the judgment by the commission exceeds the amount paid from the fund to the original judgment creditor plus interest and the cost of collection, the commission may elect to pay any overage collected to the original judgment creditor or reassign the remaining interest in the judgment to the original judgment creditor. The payment or reassignment to the original judgment creditor shall not subject the fund to further liability for payment to the original judgment creditor based on that transaction or judgment. Any costs incurred by the commission's attempting to collect assigned judgments shall be paid from the fund.

(i) The failure of an aggrieved person to comply with all of the provisions of this Code section shall constitute a waiver of any rights under this Code section.

(j) The commission, in its discretion, may use any and all funds, in excess of the amount of \$100,000.00 required by subsection (b) of this Code section, regardless of whether such funds are from the auctioneers education, research, and recovery fund or from accrued interest thereon for the purpose of helping to underwrite the cost of education and research programs for the benefit of licensees and the public as the commission may approve in accordance with the provisions of this chapter and its rules and regulations; provided, however, that the commission shall not expend or commit sums for educational or research purposes in such amounts as would cause the auctioneers education, research, and recovery fund to be reduced to an amount less than \$100,000.00.

(k) In addition to the license fees provided for in this chapter, the commission, in its discretion and based upon the need to ensure that a

minimum balance of \$100,000.00 is maintained in the auctioneers education, research, and recovery fund, may assess each licensee, only upon renewal of his license, an amount not to exceed \$150.00 per year. (Code 1981, § 43-6-22.1, enacted by Ga. L. 1991, p. 801, § 3; Ga. L. 1992, p. 2450, § 1; Ga. L. 1993, p. 123, § 24; Ga. L. 1999, p. 592, § 17; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to paragraph (d)(1) is applicable with respect to notices delivered on or after July 1, 2000.

Administrative rules and regulations. — Schools, Official Compilation of

the Rules and Regulations of the State of Georgia, Georgia Auctioneers Commission, Chapter 55-8.

Continuing education, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Auctioneers Commission, Chapter 55-9.

43-6-23. Injunctions.

Whenever, in the judgment of the commission, any person has engaged in any acts or practices which constitute or will constitute a violation of this chapter, the Attorney General may bring an action in the name of the state in the superior court of the county in which venue is proper, to abate and temporarily and permanently to enjoin such acts and practices and to enforce compliance with this chapter. The plaintiff shall not be required to give any bond. (Code 1933, § 84-307A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1982, p. 3, § 43.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, §§ 1, 17 et seq.

C.J.S. — 7A C.J.S., Attorney General, § 10 et seq.

43-6-24. Exceptions to operation of chapter.

Except as otherwise provided in this chapter, this chapter shall not apply to any person acting as a receiver, trustee in bankruptcy, administrator, executor, or any such person acting under order of any court. This chapter shall not apply to any nonprofit organization conducting an auction where the funds are to be used in a way as to benefit persons with physical or mental disabilities or disorders or for research related to cures or prevention of such disabilities or disorders, nor shall this chapter apply to any auction conducted by a nonprofit organization where the funds are to be used for the preservation of wildlife or its habitats whether conducted by a licensed auctioneer or nonlicensed auctioneer so long as the nonprofit organization obtains a letter of exemption from the commission. This chapter shall not apply to any person acting as an auctioneer in the auction of livestock, forest products, or farm products in an auction facility which is licensed and bonded under the provisions of Article 3 of Chapter 6 of Title 4 or in an

auction facility which is licensed under Code Section 10-4-101 or to any youth livestock auction, sponsored by a 4-H Club or the Future Farmers of America; provided, however, that such organization or agency must first obtain from the commission a letter of exemption. This chapter shall not apply to students of approved auctioneering schools during the term of their course of study. This chapter shall not apply to any person conducting a public sale of personal property pursuant to the provisions of Code Section 10-4-213. This chapter shall not apply to ringpersons as defined in Code Section 43-6-1. (Code 1933, § 84-303A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1979, p. 1268, § 1; Ga. L. 1987, p. 596, § 7; Ga. L. 1989, p. 1409, § 6; Ga. L. 1990, p. 576, § 4; Ga. L. 1993, p. 1030, § 7; Ga. L. 1994, p. 1391, § 1; Ga. L. 1996, p. 657, § 10.)

43-6-24.1. Liabilities of licensed auctioneer not relieved.

Nothing in this chapter shall relieve an auctioneer licensed in this state of all his or her liabilities under this chapter. (Code 1981, § 43-6-24.1, enacted by Ga. L. 1993, p. 1030, § 8.)

43-6-25. Penalty.

Any person or corporation acting as an auctioneer or apprentice auctioneer within the meaning of this chapter without a license and any person who violates this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$1,000.00, by imprisonment for a term not to exceed 90 days, or both. (Code 1933, § 84-322A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1982, p. 3, § 43.)

RESEARCH REFERENCES

ALR. — Injunction as available remedy against prosecution or arrest for conducting business or practicing profession without a license, 167 ALR 915.

43-6-25.1. Local regulations and licensing.

Nothing in this chapter shall prohibit any lawful regulation or licensing of auctioneers by any municipality, county, or other political subdivision of this state; provided, however, that no such political subdivision shall license any auctioneer required to be licensed by this chapter unless such auctioneer has been approved for licensure by the commission as required in this chapter. (Code 1981, § 43-6-25.1, enacted by Ga. L. 1987, p. 596, § 8.)

43-6-26. Termination.

Repealed by Ga. L. 1992, p. 3137, § 6, effective July 1, 1992.

Editor's notes. — This Code section amended by Ga. L. 1984, p. 438, § 1 and was part of the original Code enactment Ga. L. 1990, p. 576, § 5. (Ga. L. 1981, Ex. Sess., p. 8) and was

CHAPTER 7

BARBERS

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| Sec. | | Sec. | |
| 43-7-1. | Short title. | 43-7-13. | Requirements for license to teach barbering. |
| 43-7-2. | Purpose of chapter. | 43-7-13.1. | Alternate method for obtaining license to teach barbering. |
| 43-7-3. | Definitions. | 43-7-14. | Requirements for license to operate barber school. |
| 43-7-4. | Creation of board; composition; terms of office; conducting business by telephone; removal of members; vacancies. | 43-7-15. | Requirements for student license [Repealed]. |
| 43-7-5. | Qualifications of board members. | 43-7-16. | Requirements for license as apprentice barber; limitation on renewal. |
| 43-7-6. | Oath of board members. | 43-7-17. | Reciprocity. |
| 43-7-7. | Board meetings; secretary of board; service of process and documents; records. | 43-7-18. | Biennial renewal of licenses. |
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| 43-7-10. | Required compliance with chapter. | 43-7-21. | Display of licenses. |
| 43-7-11. | Requirements for license to practice barbering; work permits. | 43-7-22. | Temporary licenses [Repealed]. |
| 43-7-11.1. | License for barber on military installation; submission of application by September 1, 1985. | 43-7-23. | Suspension, cancellation, revocation, or refusal of licenses; reprimanding licensees; fines; restoration of licenses. |
| 43-7-11.2. | Licensing master cosmetologists as barbers. | 43-7-24. | Unlicensed activities as constituting public nuisance; injunctions. |
| 43-7-12. | Requirements for license to operate barbershop. | 43-7-24.1. | Exemption from licensing requirement for nursing home facility. |
| 43-7-12.1. | Authorization to employ cosmetologist, manicurist, esthetician, or shampooer without beauty shop license. | 43-7-25. | Continuation of rules and regulations promulgated prior to July 1, 1973. |
| | | 43-7-26. | Penalty. |
| | | 43-7-27. | Termination [Repealed]. |

Administrative rules and regulations. — Organization, Official Compilation of the Rules and Regulations of the

State of Georgia, Georgia State Board of Barbers, Chapter 70-1.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 88-401, 88-410, 88-411 as they read prior to revision of the chapter by Ga. L. 1973, p. 1450 are included in the annotations for this chapter.

Barber training as beautician may practice barbering outside class. — Qualified barber is not prohibited from practicing that profession while training as a beautician in a beauty school; provided, however, that the practice is not conducted during hours of study. 1945-57

Op. Att'y Gen. p. 479 (decided under former Code 1933, §§ 84-401, 84-410, 84-411 as they read prior to revision of chapter by Ga. L. 1973, p. 1450).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 39 Am. Jur. 2d, Health, §§ 1 et seq., 26 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 890 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 39A C.J.S., Health and Environment, §§ 3 et seq., 37 et seq., 48 et seq. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees,

§ 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Constitutionality of statute regulating barbers, 20 ALR 1111; 98 ALR 1088.

Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

Places and persons within purview of statute or ordinance regulating barbers, 59 ALR 543.

Liability of barber, beauty shop or specialist, barber college, or school of beauty culture, for injury to patron, 14 ALR2d 860; 93 ALR3d 897; 81 ALR4th 444.

43-7-1. Short title.

This chapter shall be known and may be cited as the "Georgia Barber Act." (Ga. L. 1971, p. 870, § 1; Ga. L. 1973, p. 1450, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 11 Am. Jur. 2d, Barbers and Cosmetologists, § 4 et seq.

C.J.S. — 39A C.J.S. Health and Environment, § 37 et seq.

43-7-2. Purpose of chapter.

This chapter is enacted for the purpose of safeguarding the public health, safety, and welfare by providing for state administrative control, supervision, and regulation of the practice of barbering, teaching of barbering, barbers, barber teachers, barber apprentices, barbershops, and barber schools. Barbering is declared to affect the public interest, and this chapter shall be liberally construed so as to accomplish the foregoing purpose. (Ga. L. 1971, p. 870, § 2; Ga. L. 1973, p. 1450, § 2; Ga. L. 1992, p. 2765, § 1.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, Ch. 84-4 as it read prior to revision by Ga. L. 1973, p.

1450 are included in the annotations for this Code section.

Purpose of the statutes on barbering is to sift qualified from unqualified applicants, to license qualified applicants, and thereafter to keep practicing members of trade under supervision,

with provisions for revocation of certificates of registration if a person involved fails to keep within standards set up. *Beard v. City of Atlanta*, 91 Ga. App. 584, 86 S.E.2d 672 (1955) (decided under former Code 1933, ch. 84-4, as it read prior to revision by Ga. L. 1973, p. 1450).

43-7-3. Definitions.

As used in this chapter, the term:

- (1) "Barber" means any person who practices barbering.
- (2) "Barber apprentice" means any person who practices barbering under the constant and direct supervision of a licensed barber.
- (3) "Barbering" means the occupation of shaving or trimming the beard, cutting or dressing the hair, giving facial or scalp massages, giving facial or scalp treatment with oils or cream or other preparations made for this purpose, either by hand or by means of mechanical appliances, singeing and shampooing the hair, dyeing the hair, or permanently waving or straightening the hair of any living person for compensation.
- (4) "Barber school" means any premises, not operated as part of the public school system of this state, where barbering is taught for a fee or other compensation. Technical institutes whose programs have been approved by the Technical College System of Georgia are not "barber schools" within the meaning of this chapter.
- (5) "Barbershop" means the immediate premises upon or within which the practice of barbering is carried on.
- (6) "Barber teacher" means any person who, for a fee or other compensation, teaches barbering to any other person.
- (7) "Board" means the State Board of Barbers.
- (8) "License" means a valid and current certificate of registration issued by the division director on behalf of the board which shall give the named person to whom it is issued authority to engage in the activity prescribed thereon.
- (9) "Licensee" means any person holding a license.
- (10) "Person" means a natural person, not a legal entity.
- (11) "Student" means any person enrolled and pursuing a course of study in a licensed barber school. (Ga. L. 1931, p. 157, § 2; Code 1933, § 84-401; Ga. L. 1937, p. 564, § 2; Ga. L. 1963, p. 56, § 1; Ga. L. 1965, p. 603, § 1; Ga. L. 1970, p. 453, § 1; Ga. L. 1971, p. 870, § 3;

Ga. L. 1973, p. 1450, § 3; Ga. L. 1980, p. 530, § 1; Ga. L. 1996, p. 1239, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2008, p. 335, § 7/SB 435.)

JUDICIAL DECISIONS

No gender restrictions. — Operations of both barbershops and beauty salons involve cutting, dressing, singeing, shampooing, dyeing, or permanently waving the hair of a client. The statutes do not

restrict the use of barbershops or beauty salons to one specific gender. *Acord v. Maynard*, 198 Ga. App. 296, 401 S.E.2d 315 (1991).

OPINIONS OF THE ATTORNEY GENERAL

Barbers may perform services only on hair of living persons. — Effect of 1966 amendments to the laws on barbering and Ga. L. 1963, p. 45 (see O.C.G.A. Ch. 10, T. 43) was to confer as between barbers and cosmetologists extra jurisdiction upon cosmetologists in regard to services performed upon hair of deceased persons; the extra jurisdiction conferred upon cosmetologists, however, is not absolute but must be considered as

being shared with that of funeral directors. 1965-66 Op. Att'y Gen. No. 66-180.

Barbers and cosmetologists may both work with wigs. — By deleting word "human" from definition of cosmetologist, the legislature intended to clear up ambiguity and thus confer joint jurisdiction over wigs as well as human hair upon both barbers and cosmetologists. 1965-66 Op. Att'y Gen. No. 66-180.

RESEARCH REFERENCES

ALR. — Places and persons within purview of statute or ordinance regulating barbers, 31 ALR 433; 59 ALR 543.

43-7-4. Creation of board; composition; terms of office; conducting business by telephone; removal of members; vacancies.

(a) There is created a State Board of Barbers. The board shall consist of six members, each of whom shall be appointed by the Governor, approved by the Secretary of State, and confirmed by the Senate. Five of the members shall be barbers. The sixth member shall be appointed from the public at large and shall have no connection whatsoever with the profession of barbering. All terms shall be for three years. Upon the expiration of the term of office, a member shall continue to serve until a successor is appointed and qualified.

(b) With the exception of hearings in contested cases, the board may conduct business by conference telephone.

(c) The Governor may remove any member of the board for failure to attend meetings, neglect of duty, incompetence, revocation or suspension of his license, or other dishonorable conduct. After such removal or vacancy due to death or resignation, the Governor shall appoint a

successor as provided in this Code section to serve the unexpired term. (Ga. L. 1914, p. 75, § 3; Code 1933, § 84-403; Ga. L. 1937, p. 564, § 1; Ga. L. 1956, p. 316, § 1; Ga. L. 1963, p. 56, § 3; Ga. L. 1965, p. 603, § 2; Ga. L. 1971, p. 870, § 4; Ga. L. 1973, p. 1450, § 5; Ga. L. 1977, p. 223, § 2; Ga. L. 1980, p. 59, § 1; Ga. L. 1986, p. 766, § 1.)

RESEARCH REFERENCES

ALR. — Disqualification, for bias or profession sitting in license revocation proceeding, 97 ALR2d 1210.

43-7-5. Qualifications of board members.

To be eligible for appointment as a member of the board, a person must:

- (1) Be at least 25 years of age;
- (2) Be a citizen of the United States and a resident of this state;
- (3) Hold a barber or barber teacher license;
- (4) Have had at least five years of practical experience in the practice of barbering immediately preceding his appointment;
- (5) Not, while serving on the board, be a member of or affiliated with any barber school or any business which sells, rents, or distributes supplies to barbershops or barber schools; and
- (6) Not, while serving on the board, be a member of the State Board of Cosmetology. (Ga. L. 1916, p. 75, § 3; Code 1933, § 84-403; Ga. L. 1956, p. 316, § 1; Ga. L. 1963, p. 56, § 3; Ga. L. 1965, p. 603, § 2; Ga. L. 1971, p. 870, § 6; Ga. L. 1973, p. 1450, § 6.)

43-7-6. Oath of board members.

Appointees to the board shall, immediately after their appointment, take and subscribe to a written oath or affirmation required by law for all public officers. (Ga. L. 1914, p. 75, § 3; Code 1933, § 84-403; Ga. L. 1956, p. 316, § 1; Ga. L. 1963, p. 56, § 3; Ga. L. 1965, p. 603, § 2; Ga. L. 1971, p. 870, § 7; Ga. L. 1973, p. 1450, § 7.)

43-7-7. Board meetings; secretary of board; service of process and documents; records.

The board shall meet at least six days a year but shall not meet more than 36 days in one year. All meetings shall be open to the public except that the board may hold restricted attendance sessions to prepare, give, and grade examinations and to deliberate in connection with the

decision in a contested case. The division director shall be secretary of the board and, in addition to his or her duties as prescribed by Code Section 43-1-3, shall perform such other administrative duties as may be prescribed by the board. All legal process and all documents required by law to be served upon or filed with the board shall be served upon or filed with the division director at his or her office. All official records of the board, or affidavits by the division director as to the content of such records, shall be prima-facie evidence of all matters required to be kept therein. (Ga. L. 1963, p. 56, § 3; Ga. L. 1965, p. 603, § 2; Ga. L. 1971, p. 870, § 8; Ga. L. 1973, p. 1450, § 8; Ga. L. 2000, p. 1706, § 19; Ga. L. 2010, p. 266, § 14/SB 195.)

The 2010 amendment, effective May 20, 2010, inserted “or her” in the third sentence and substituted “his or her office” for “his office in Atlanta” at the end of the fourth sentence.

Cross references. — Opening of meetings of public bodies to members of public generally, T. 50, C. 14.

43-7-8. Reimbursement of board members.

Each member of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2. (Ga. L. 1914, p. 85, § 5; Ga. L. 1931, p. 157, § 4; Code 1933, § 84-405; Ga. L. 1956, p. 316, § 3; Ga. L. 1963, p. 56, § 5; Ga. L. 1971, p. 870, § 9; Ga. L. 1973, p. 1450, § 9; Ga. L. 1980, p. 530, § 1.1.)

43-7-9. General powers and duties of board.

The board shall:

(1) Prepare and approve all examinations of applicants for licenses;

(2) Determine the qualifications of and license barbers, barber teachers, barber apprentices, and persons operating barbershops and barber schools to engage in these respective activities;

(3) Regulate the practice of barbering, teaching of barbering, barbers, barber teachers, barber apprentices, and persons operating barbershops and barber schools;

(4) Investigate alleged violations of this chapter and any other law of this state pertaining to barbering and any rules and regulations adopted by the board; and, in order to facilitate this duty, any board member or inspector shall have the power and right to enter into and make reasonable inspection of any barbershop or barber school during regular business hours;

(5) Conduct hearings in accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act”; and, in order to facilitate

this duty, the board and the division director shall have the power to subpoena throughout the state witnesses, designated documents, papers, books, accounts, letters, photographs, objects, or other tangible things;

(6) Reprimand any person, or suspend, revoke, or cancel the license of, or refuse to grant, renew, or restore a license to any person upon any ground specified in this chapter;

(7) Adopt a seal, the imprint of which, together with the authorized signature of either the division director or any other member authorized by the board, shall be effective to evidence its official acts;

(8) Maintain in the office of the division director a register of all persons holding a license and maintain a record of all inspections made for a period of two years; and

(9) Adopt such rules and regulations as shall be reasonably necessary for the enforcement and implementation of the provisions and purposes of this chapter and other laws of this state insofar as they relate to barbering, including, but not limited to, rules and regulations prescribing requirements for sanitation in barbershops and barber schools when these rules have been approved by the Board of Public Health. (Ga. L. 1914, p. 75, §§ 4, 6, 8, 13; Code 1933, §§ 84-404, 84-407, 84-408, 84-411; Ga. L. 1956, p. 316, § 3; Ga. L. 1963, p. 56, § 4; Ga. L. 1965, p. 603, § 3; Ga. L. 1971, p. 870, § 11; Ga. L. 1973, p. 1450, § 11; Ga. L. 1992, p. 2765, § 2; Ga. L. 2000, p. 1706, § 19; Ga. L. 2009, p. 453, § 1-5/HB 228; Ga. L. 2011, p. 705, § 6-4/HB 214.)

The 2009 amendment, effective July 1, 2009, substituted “Board of Community Health” for “Board of Human Resources” at the end of paragraph (9).

The 2011 amendment, effective July 1, 2011, substituted “Board of Public Health” for “Board of Community Health” at the end of paragraph (9).

Administrative rules and regulations. — Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Barbers, Chapter 70-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Validity of rule separating barber school from shop. — Rule requiring separation of schools or colleges from regular shops where public is served for consideration has to do with provisions of the

law as the rule is designed to carry out purposes of the law; the rule is also reasonable and meets requirement for rules of the board. 1948-49 Op. Att’y Gen. p. 298.

43-7-10. Required compliance with chapter.

No person shall practice or teach barbering, be a student or an apprentice of barbering, or operate a barbershop or barber school unless

he holds a proper license and continues to comply with this chapter and all rules and regulations adopted by the board; provided, however, that this chapter shall not apply to professional and trade activities which are properly conducted under authority of other licensing laws of this state. (Ga. L. 1914, p. 85, § 1; Code 1933, § 84-402; Ga. L. 1971, p. 870, § 13; Ga. L. 1973, p. 1450, § 13.)

OPINIONS OF THE ATTORNEY GENERAL

License is required of one doing small amount of barbering in own home. 1948-49 Op. Att'y Gen. p. 628.

Person instructing in barbering at beauty shows or for free must have license. — If any person not lawfully entitled to a certificate of registration under former Code 1933, Ch. 84-4 (see

O.C.G.A. Ch. 7, T. 43) shall instruct or attempt to instruct any person in barbering, such person would be guilty of a misdemeanor, whether such instruction is in a beauty show or at any other place, and this would be true whether instruction was with or without compensation. 1958-59 Op. Att'y Gen. p. 261.

RESEARCH REFERENCES

ALR. — Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

43-7-11. Requirements for license to practice barbering; work permits.

(a) A license to practice barbering shall be issued to any person who:

(1) Is at least 16 years of age;

(2) Has completed the seventh grade of school instruction or its equivalent;

(3) Has completed a prescribed course of study of at least 1,500 hours in a licensed or approved barber school or in a program approved by the Technical College System of Georgia or has served as an apprentice in a barbershop for 3,000 hours under the supervision of a master barber; and

(4) Satisfactorily passes a written and practical examination prepared or approved by the board.

(b) An approved applicant for examination under this Code section may be issued a work permit authorizing said applicant to practice such occupation until the results of the examination for which the applicant is scheduled are released. If the applicant fails to appear for the examination, the work permit shall be revoked unless the applicant provides just cause to the board why he was unable to appear for the examination. (Ga. L. 1914, p. 85, § 10; Ga. L. 1931, p. 157, § 7; Code

1933, § 84-409; Ga. L. 1956, p. 316, § 4; Ga. L. 1963, p. 56, § 9; Ga. L. 1965, p. 603, § 7; Ga. L. 1966, p. 312, § 1; Ga. L. 1967, p. 474, § 1; Ga. L. 1968, p. 421, § 1; Ga. L. 1971, p. 870, § 14; Ga. L. 1973, p. 1450, § 14; Ga. L. 1980, p. 530, § 4; Ga. L. 1982, p. 1597, § 2; Ga. L. 1986, p. 766, § 2; Ga. L. 1996, p. 1239, § 2; Ga. L. 2008, p. 335, § 7/SB 435.)

Administrative rules and regulations. — Examinations, Official Compilation of the Rules and Regulations of the

State of Georgia, Georgia State Board of Barbers, Chapter 70-6.

JUDICIAL DECISIONS

Applicant must prove health and skills before certificate issued. — Certificate of registration may not be issued until applicant presents to board proof that the applicant is free from disease and sufficiently skilled in the performance of the duties of the applicant's calling. *Ham v. State*, 59 Ga. App. 872, 2 S.E.2d 504 (1939).

Requiring resubmission of such proof annually is reasonable. — It is not unreasonable to require that barbers furnish certificates as to the continuation of their freedom from disease from year to

year. *Ham v. State*, 59 Ga. App. 872, 2 S.E.2d 504 (1939).

Requirement is justified for public safety. — Requirement that a barber present proof to the board that the barber is free from disease and sufficiently skilled in practice of barbering is as reasonable as are requirements for practice of law or medicine; it is for the benefit of the public, and exemption certificates do not prevent the requirement's universal application. *Ham v. State*, 59 Ga. App. 872, 2 S.E.2d 504 (1939).

RESEARCH REFERENCES

ALR. — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

43-7-11.1. License for barber on military installation; submission of application by September 1, 1985.

Notwithstanding any other provisions of this chapter, any person who has actively engaged in the practice of barbering on a military installation in Georgia for three years prior to July 1, 1985, shall be eligible to receive a license to practice barbering upon proper proof of experience, application, and appropriate fee being submitted to the board on or before September 1, 1985. (Code 1981, § 43-7-11.1, enacted by Ga. L. 1985, p. 1419, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, "July 1,

1985," was substituted for "the effective date of this paragraph".

43-7-11.2. Licensing master cosmetologists as barbers.

A person licensed as a master cosmetologist under Chapter 10 of this title shall be eligible to take the examination provided for in Code

Section 43-7-11 if that person completes a board approved 300 hour prescribed course in a barbering school, submits a complete application, and pays the proper fees established by the board. (Code 1981, § 43-7-11.2, enacted by Ga. L. 1986, p. 766, § 3.)

43-7-12. Requirements for license to operate barbershop.

A license to operate a barbershop shall be issued, renewed, or restored to any person who can show that such barbershop:

(1) Provides and maintains such physical and sanitary facilities and equipment as may be required by the rules and regulations of the board;

(2) Trains and utilizes apprentices in a manner and number as required by the board; and

(3) Does business only at the location shown on the application for licensure. (Ga. L. 1971, p. 870, § 17; Ga. L. 1973, p. 1450, § 17; Ga. L. 1980, p. 530, § 5; Ga. L. 1986, p. 766, § 4; Ga. L. 1988, p. 13, § 43; Ga. L. 2010, p. 266, § 15/SB 195.)

The 2010 amendment, effective May 20, 2010, substituted the present provisions of paragraph (2) for the former provisions, which read: "Does not train more than one apprentice at any one time, which apprentice shall be under the supervision of a master barber; and".

Administrative rules and regula-

tions. — Dealing with establishment, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Barbers, Chapter 70-4.

Sanitation and health, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Barbers, Chapter 70-5.

43-7-12.1. Authorization to employ cosmetologist, manicurist, esthetician, or shampooer without beauty shop license.

A barbershop licensed pursuant to this chapter shall be authorized to employ a cosmetologist, manicurist, esthetician, or shampooer licensed under Chapter 10 of this title without that barbershop being required to be licensed as a beauty shop or salon under Chapter 10 of this title. (Code 1981, § 43-7-12.1, enacted by Ga. L. 1985, p. 1419, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, "Chapter 10 of this title" was substituted for "said Chapter 10".

43-7-13. Requirements for license to teach barbering.

A license to teach barbering shall be issued to any person who:

(1) Is a high school graduate or its equivalent;

(2) Reserved;

(3) Has completed a teacher's training course as prescribed by the board which requires 750 hours from a board approved school or from a program approved by the Technical College System of Georgia; and

(4) Satisfactorily passes a written and practical examination prepared or approved by the board. (Ga. L. 1931, p. 157, § 9; Code 1933, § 84-411; Ga. L. 1956, p. 316, § 6; Ga. L. 1963, p. 56, § 11; Ga. L. 1965, p. 603, § 11; Ga. L. 1971, p. 870, § 15; Ga. L. 1973, p. 1450, § 15; Ga. L. 1985, p. 1419, § 3; Ga. L. 1986, p. 766, § 5; Ga. L. 1996, p. 1239, § 3; Ga. L. 2008, p. 335, § 7/SB 435.)

OPINIONS OF THE ATTORNEY GENERAL

Instructor may charge for services and materials. — Instructor of apprentice barber may charge apprentice for the instructor's services and for materials used by trainee. 1948-49 Op. Att'y Gen. p. 297.

43-7-13.1. Alternate method for obtaining license to teach barbering.

A person certified by the Department of Education to teach barbering in the public schools may obtain a license to teach barbering without meeting the requirements of Code Section 43-7-13 if that person:

(1) Holds a current barber license at the master level;

(2) Holds a diploma or certificate indicating completion of 1,500 credit hours from a board approved school;

(3) Has completed the three-year teacher training program required by the Department of Education; and

(4) Has satisfactorily passed an examination prepared or approved by the board. (Code 1981, § 43-7-13.1, enacted by Ga. L. 1985, p. 1419, § 4.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, "State" was deleted preceding "Department of Education" in two places.

43-7-14. Requirements for license to operate barber school.

A license to operate a barber school shall be issued, renewed, or restored to any person who can show that such school:

(1) Provides a course of study as prescribed by the board for basic barbering practice;

(2) Provides a course of study as prescribed by the board for the training of barber teachers;

(3) Possesses the equipment necessary for the teaching of all courses in the curriculum prescribed by the board;

(4) Is at all times under the constant and direct supervision of a licensed barber teacher;

(5) Employs only those barber teachers who are licensed by the board;

(6) Provides at least one barber teacher for each 20 students enrolled;

(7) Keeps a current and accurate record of each student's progress, establishes grades, and holds examinations before issuing diplomas;

(8) Keeps permanently and conspicuously displayed a sign which informs the public that a barber school is being operated on the premises, which sign shall display the words "Service by Students Only";

(9) Requires all teachers while on the school premises to confine their work to instruction and research in the field of barbering. In no event shall a teacher or other person be allowed to practice barbering while on the school premises except for the purpose of demonstration to students;

(10) Allows no student to render barbering services to a patron of the school until he has completed a prescribed minimum number of hours in theory and practical work and in no instance allows its students to collect a fee or other compensation for such services; and

(11) Has at least ten student applications for enrollment in the basic course of barbering, provided that such students shall not have been enrolled in a licensed barber school within nine months immediately preceding application for a license to operate a barber school. (Ga. L. 1931, p. 157, § 9; Code 1933, § 84-411; Ga. L. 1956, p. 316, § 6; Ga. L. 1963, p. 56, § 11; Ga. L. 1965, p. 603, § 11; Ga. L. 1971, p. 870, § 19; Ga. L. 1973, p. 1450, § 19.)

Administrative rules and regulations. — Requirements, Official Compilation of the Rules and Regulations of the

State of Georgia, Georgia State Board of Barbers, Chapter 70-2.

43-7-15. Requirements for student license.

Reserved. Repealed by Ga. L. 1992, p. 2765, § 3, effective May 4, 1992.

Editor's notes. — This Code section was based on Ga. L. 1971, p. 870, § 20; Ga. L. 1973, p. 1450, § 20; Ga. L. 1982, p. 1597, § 3.

43-7-16. Requirements for license as apprentice barber; limitation on renewal.

(a) A license to practice barbering as an apprentice shall be issued to any applicant who shall furnish the board evidence that such applicant:

- (1) Will practice under the supervision of a licensed barber with at least 18 months' experience in the practice of barbering; and
- (2) Is 16 years of age or older.

(b) A license to practice barbering as an apprentice shall not be renewed more than one time. (Code 1933, § 84-410.1, enacted by Ga. L. 1965, p. 603, § 10; Ga. L. 1970, p. 453, § 1; Ga. L. 1971, p. 870, § 18; Ga. L. 1973, p. 1450, § 18; Ga. L. 1982, p. 1597, § 4; Ga. L. 1985, p. 1419, § 5; Ga. L. 1986, p. 766, § 6; Ga. L. 2010, p. 266, § 16/SB 195.)

The 2010 amendment, effective May 20, 2010, in subsection (a), in the introductory paragraph, substituted "applicant" for "person" in the middle and added "evidence that such applicant" at the end, substituted "Will practice" for "Evidence

that he will" at the beginning of paragraph (a)(1), and substituted the present provisions of paragraph (a)(2) for the former provisions, which read: "Evidence that he has completed the fifth grade of school instruction or its equivalent."

RESEARCH REFERENCES

ALR. — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

43-7-17. Reciprocity.

The board may issue a license to practice under this chapter by endorsement, without examination, to persons having licenses under similar laws of another state if, in the opinion of the board, the standards and qualifications for licensure in that state are comparable to those in this state for the particular license applied for. (Ga. L. 1931, p. 157, § 7; Code 1933, § 84-409; Ga. L. 1956, p. 316, § 4; Ga. L. 1963, p. 56, § 9; Ga. L. 1965, p. 603, § 7; Ga. L. 1966, p. 312, § 1; Ga. L. 1967, p. 474, § 1; Ga. L. 1971, p. 870, § 21; Ga. L. 1973, p. 1450, § 21; Ga. L. 1982, p. 1597, § 5.)

Cross references. — Cooperation between Georgia and other states generally, T. 28, C. 6.

43-7-18. Biennial renewal of licenses.

All licenses shall expire biennially. All applications for renewal of a license shall be filed with the division director prior to the expiration

date, accompanied by the biennial renewal fee prescribed by the board. (Ga. L. 1914, p. 85, § 12; Ga. L. 1931, p. 157, § 10; Code 1933, § 84-412; Ga. L. 1956, p. 316, § 7; Ga. L. 1963, p. 56, § 12; Ga. L. 1971, p. 870, § 23; Ga. L. 1973, p. 1450, § 23; Ga. L. 1980, p. 530, § 6; Ga. L. 1982, p. 1597, § 6; Ga. L. 2000, p. 1706, § 19.)

43-7-19. Restoration of expired licenses.

A license which has expired for failure to renew may be restored after application and payment of the prescribed restoration fee. (Ga. L. 1971, p. 870, § 24; Ga. L. 1973, p. 1450, § 24; Ga. L. 1982, p. 1597, § 7.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 84-412, are included in the annotations for this Code section.

Board need not reinstate license without evidence of health. — If one formerly licensed as a barber sought an annual renewal license and tendered the required fee but no laboratory report and

doctor's certificate showing the barber's freedom from infectious or contagious diseases and the board refused to issue the barber a renewal license, the judge of superior court did not err in denying a writ of mandamus to compel issuance thereof. *Eason v. Morrison*, 181 Ga. 322, 182 S.E. 163 (1935) (decided under former Code 1933, § 84-412).

43-7-20. Renewal or restoration of suspended licenses.

A suspended license is subject to expiration and must be renewed or restored as provided in this chapter during the term of suspension. (Ga. L. 1971, p. 870, § 25; Ga. L. 1973, p. 1450, § 25.)

43-7-21. Display of licenses.

Every person holding a license issued by the board shall display it in a conspicuous place in his school, place of business, or employment. (Ga. L. 1914, p. 85, § 12; Code 1933, § 84-412; Ga. L. 1956, p. 316, § 7; Ga. L. 1963, p. 56, § 12; Ga. L. 1971, p. 870, § 27; Ga. L. 1973, p. 1450, § 27.)

43-7-22. Temporary licenses.

Reserved. Repealed by Ga. L. 1986, p. 766, § 7, effective April 3, 1986.

Editor's notes. — This Code section was based on Ga. L. 1971, p. 870, § 22, and Ga. L. 1973, p. 1450, § 22.

43-7-23. Suspension, cancellation, revocation, or refusal of licenses; reprimanding licensees; fines; restoration of licenses.

(a) The board, acting upon its own knowledge or upon written and verified complaint filed by any person, shall have the power to reprimand, or to suspend, revoke, or cancel the license of, or to refuse to grant, renew, or restore a license to any licensee upon proof of any one of the following grounds:

(1) The commission of any false, fraudulent, or deceitful act or the use of any forged, false, or fraudulent document in connection with the license requirements of this chapter or the rules and regulations of the board;

(2) Failure at any time to comply with the requirements for a license under this chapter;

(3) The practice of barbering under a false or assumed name;

(4) Habitual intemperance in the use of alcoholic spirits, narcotics, or stimulants to such an extent as to render the licensee unsafe or unfit to practice or teach barbering;

(5) Any physical disease or mental disability which renders the licensee unfit to practice or teach barbering;

(6) Any dishonorable or unethical conduct likely to deceive, defraud, or harm the public;

(7) Knowing performance of any act which in any way assists an unlicensed person to practice or teach barbering; or

(8) Violating, either directly or indirectly, or assisting in or abetting the violation of, any provision of this chapter or any rule or regulation of the board.

(b) The board may impose a fine not to exceed \$500.00 for each violation of any provision of subsection (a) of this Code section. Such fines shall be listed in a schedule contained in the rules and regulations of the board. The licensee shall pay the fine within 30 days after receiving written notification from either the board or a representative of the board unless the licensee requests in writing a hearing before the board. Such request for a hearing must be received by the board within 30 days after receipt of the written notification from the board. Failure to either pay the fine or request a hearing shall result in immediate suspension of the license pending a hearing to determine whether revocation or other disciplinary action should be imposed on the licensee.

(c) The board for good cause shown and under such conditions as it may prescribe may restore a license to any person whose license has been suspended or revoked.

(d) Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," shall apply to any proceeding under this Code section. (Code 1933, § 84-412.2, enacted by Ga. L. 1965, p. 603, § 12; Ga. L. 1971, p. 870, § 28; Ga. L. 1973, p. 1450, § 28; Ga. L. 1992, p. 2765, § 4.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, a comma was deleted following "prescribe" in subsection (c).

RESEARCH REFERENCES

ALR. — Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 ALR 1388. Practices forbidden by state deceptive trade practice and consumer protection acts, 89 ALR3d 449.

43-7-24. Unlicensed activities as constituting public nuisance; injunctions.

The practice or teaching of barbering and the operation of barber schools and barbershops are declared to be activities affecting the public interest and involving the health, safety, and welfare of the public. Such activities when engaged in by a person who is not licensed are declared to be a public nuisance, harmful to the public health, safety, and welfare. The board or the appropriate prosecuting attorney may bring an action, in the superior court of the county where such unlicensed person resides, to restrain and enjoin such unlicensed practice. It shall not be necessary in order to obtain the equitable relief provided for in this Code section to allege or prove that there is no adequate remedy at law. (Code 1933, § 84-418, enacted by Ga. L. 1965, p. 603, § 17; Ga. L. 1971, p. 870, § 29; Ga. L. 1973, p. 1450, § 29.)

RESEARCH REFERENCES

C.J.S. — 66 C.J.S., Nuisances, §§ 7 et seq., 15, 65, 68, 71, 74, 86, 89, 91, 92, 103, 104, 108.

43-7-24.1. Exemption from licensing requirement for nursing home facility.

Notwithstanding any other provision of this chapter, premises made available for a barbershop within a facility licensed as a nursing home pursuant to Article 1 of Chapter 7 of Title 31 shall not be required to be licensed as a barbershop under this chapter, or otherwise be subject to any provisions of this chapter except for inspections, investigations, or both, for alleged violations of this chapter by any person licensed under

this chapter, if barbering services in such premises are rendered only to residents of the nursing home. (Code 1981, § 43-7-24.1, enacted by Ga. L. 1985, p. 1133, § 1.)

43-7-25. Continuation of rules and regulations promulgated prior to July 1, 1973.

All rules and regulations that were adopted by the Georgia State Board of Barbers as it existed prior to July 1, 1973, shall continue in full force and effect until modified or repealed. (Ga. L. 1971, p. 870, § 12; Ga. L. 1973, p. 1450, § 12.)

43-7-26. Penalty.

Any person who violates this chapter shall be guilty of a misdemeanor. (Ga. L. 1914, p. 85, § 14; Ga. L. 1931, p. 157, §§ 11, 12; Code 1933, § 84-9904; Ga. L. 1937, p. 564, § 7; Ga. L. 1963, p. 56, § 15; Ga. L. 1971, p. 870, § 30; Ga. L. 1973, p. 1450, § 30.)

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 84-4, are included in the annotations for this Code section.

Penalty for unlicensed activities. — If any person not lawfully entitled to a certificate of registration shall instruct or

attempt to instruct any person in barbering, such person is guilty of a misdemeanor, whether such instruction is in a beauty show or at any other place, and this is true whether the instruction is with or without compensation. 1958-59 Op. Att'y Gen. p. 261 (decided under former Code 1933, Ch. 84-4).

43-7-27. Termination.

Repealed by Ga. L. 1992, p. 3137, § 7, effective July 1, 1992.

Editor's notes. — This Code section was based on Ga. L. 1982, p. 1597, §§ 1, 8; Ga. L. 1983, p. 3, § 32; Ga. L. 1986, p. 766, § 8; and Ga. L. 1992, p. 2765, § 5.

CHAPTER 7A

**PROFESSIONAL COUNSELORS, SOCIAL WORKERS,
AND MARRIAGE AND FAMILY THERAPISTS**

43-7A-1 through 43-7A-24.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, this chapter was redesignated as present Chapter 10A.

CHAPTER 8

OPERATORS OF BILLIARD ROOMS

Sec.		Sec.	
43-8-1.	Definitions.	43-8-3.	Applicability of chapter to billiard rooms operated by religious orders, charitable institutions, and clubs.
43-8-2.	Local governing authority to license and regulate billiard rooms.		

Editor's notes. — Ga. L. 1990, p. 1916, § 1, effective July 1, 1990, repealed the Code sections formerly codified as this chapter and enacted the current chapter. The former chapter consisted of Code sections 43-8-1 through 43-8-18. Former Chapter 8 was based on Ga. L. 1925, p.

286, §§ 1-17; Code 1933, §§ 84-1601 — 84-1617 and 84-9924 — 84-9926; Ga. L. 1953, Jan.-Feb. Sess., p. 66, § 1; Ga. L. 1956, p. 610, § 1; Ga. L. 1978, p. 1488, §§ 1-3; Ga. L. 1978, p. 1753, § 1; Ga. L. 1982, p. 3, § 43; Ga. L. 1985, p. 657, § 1; Ga. L. 1988, p. 1405, §§ 1-5.

JUDICIAL DECISIONS

Operation of billiard room falls within police power of state. — Operation of a pool or billiard room for public entertainment is a business which, from its very nature, comes within the police

power of the state. Such power may be exercised directly by the state or indirectly through medium of subordinate public corporations of the state. *Shaver v. Martin*, 166 Ga. 424, 143 S.E. 402 (1928).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 8 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses,

§ 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Licensing and regulation of pool and billiard rooms and bowling alleys, 20 ALR 1482; 29 ALR 41; 53 ALR 149; 72 ALR 1339.

Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

Liability for injury to patron of billiard or pool room, 15 ALR3d 1420.

Zoning or licensing regulation prohibiting or restricting location of billiard rooms and bowling alleys, 100 ALR3d 252.

43-8-1. Definitions.

As used in this chapter, the term:

(1) "Area of operation" means the unincorporated area of the county in the case of counties and the territory located within the corporate limits of the municipality in the case of municipalities.

(2) "Billiard room" means any public place where a person is permitted to play the game of billiards and for which a charge is made for use of equipment.

(3) "Billiards" means any of the several games played on a table surrounded by an elastic ledge of cushions with balls which are impelled by a cue and shall include all forms of the game known as "carom billiards," "pocket billiards," and "English billiards."

(4) "Governing authority" means the official or group or body of officials of a county or municipality authorized to exercise the legislative powers of the county or municipality.

(5) "Local government" means any county or municipality of this state. (Code 1981, § 43-8-1, enacted by Ga. L. 1990, p. 1916, § 1.)

JUDICIAL DECISIONS

Cited in *Whalen v. Atlanta Billiard Club, Inc.*, 225 Ga. 434, 169 S.E.2d 304 (1969).

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Gambling, § 38. pool and billiard rooms and bowling alleys, 20 ALR 1482; 29 ALR 41; 53 ALR 149; 72 ALR 1339.

ALR. — Licensing and regulation of

43-8-2. Local governing authority to license and regulate billiard rooms.

(a) Subject to the authorizations and limitations of this Code section, the governing authority of each local government in this state shall have the power by ordinance or resolution to license, regulate, and tax billiard rooms within its respective area of operation.

(b) If ordinances or resolutions of local governments regulating billiard rooms are adopted, such ordinances or resolutions shall be subject to the following conditions:

(1) A license fee shall be consistent with the cost of regulation of billiard rooms and business taxes assessed upon billiard rooms shall be established on the same basis as such taxes are imposed for

similar types of businesses, provided that a license fee may be imposed on a billiard room which is operated as part of another business or activity licensed by a local government;

(2) An ordinance or resolution which prohibits the operation of billiard rooms during specified hours shall not apply to a business which includes a billiard room if the billiard room is not operated during the prohibited hours; provided, however, no ordinance or resolution controlling the hours of operation of billiard rooms shall prohibit their operation from 6:00 A.M. until 12:00 Midnight;

(3) Any ordinance or resolution which prohibits alcoholic beverages from being sold, served, or allowed to be used in or on the premises of billiard rooms or any place operated in connection therewith shall not apply if such premises or establishment is an establishment which is authorized to sell alcoholic beverages and derives at least 50 percent of its total annual gross revenues from the sale of products or services other than alcoholic beverages; provided, however, that if alcoholic beverages are sold by the drink for consumption on the premises of a billiard room, the governing authority of a local government may prohibit the sale, serving, or use of alcoholic beverages therein unless the establishment derives at least 75 percent of its revenue from the sale of products or services other than alcoholic beverages; and

(4) No local government may prohibit billiard rooms or the playing of billiards in any business which neither sells alcoholic beverages for consumption on the premises nor engages in package sales of such beverages nor allows alcoholic beverages to be consumed on the premises.

(c) Notwithstanding anything in this chapter to the contrary, municipal corporations and counties may impose reasonable regulations, suspension and revocation of licenses under the same standards that are applicable to other businesses licensed by the municipality or county. (Code 1981, § 43-8-2, enacted by Ga. L. 1990, p. 1916, § 1; Ga. L. 1994, p. 97, § 43.)

Editor's notes. — Ga. L. 1990, p. 1916, § 2, not codified by the General Assembly, provides: "Unless specifically prohibited by the provisions of Chapter 8 of Title 43 as revised, reenacted, and set forth in Section 1 of this Act, existing regulations

imposed upon billiard rooms by local ordinances or resolutions in existence on the effective date of this Act shall remain in effect." This Act became effective July 1, 1990.

RESEARCH REFERENCES

Am. Jur. 2d. — 27A Am. Jur. 2d, Entertainment and Sports Law, §§ 4 et seq., 27. 38 Am. Jur. 2d, Gambling, § 9.

C.J.S. — 30A C.J.S., Entertainment and Amusement; Sports, §§ 11 et seq., 27.

ALR. — Licensing and regulation of

pool and billiard rooms and bowling alleys, 20 ALR 1482; 29 ALR 41; 53 ALR 149; 72 ALR 1339.

43-8-3. Applicability of chapter to billiard rooms operated by religious orders, charitable institutions, and clubs.

This chapter shall not apply to billiard tables or billiard rooms operated by private industrial concerns, Young Men's Christian Associations, religious orders, charitable institutions, state, county, or city institutions, fraternal orders, or bona fide clubs using such tables for members or employees only. (Code 1981, § 43-8-3, enacted by Ga. L. 1990, p. 1916, § 1.)

Editor's notes. — Ga. L. 1990, p. 1916, § 2, not codified by the General Assembly, provides: "Unless specifically prohibited by the provisions of Chapter 8 of Title 43 as revised, reenacted, and set forth in Section 1 of this Act, existing regulations

imposed upon billiard rooms by local ordinances or resolutions in existence on the effective date of this Act shall remain in effect." This Act became effective July 1, 1990.

RESEARCH REFERENCES

Am. Jur. 2d. — 27A Am. Jur. 2d, Entertainment and Sports Law, § 4.

CHAPTER 8A

PROFESSIONAL BOXING

43-8A-1 through 43-8A-100.

Repealed by Ga. L. 2001, p. 752, § 2, effective July 1, 2001.

Editor's notes. — This chapter consisted of Code Sections 43-8A-1 (Article 1), 43-8A-20 through 43-8A-25 (Article 2), 43-8A-40 through 43-8A-44 (Article 3), 43-8A-60 through 43-8A-63 (Article 4), 43-8A-80 through 43-8A-82 (Article 5), 43-8A-100 (Article 6), relating to profes-

sional boxing, and was based on Ga. L. 1998, p. 1052, § 2; Ga. L. 1999, p. 891, §§ 1 — 8; Ga. L. 2000, p. 136, § 43; Ga. L. 2000, p. 1706, § 19. For present comparable provisions, see Code Sections 43-4B-1 et seq.

CHAPTER 8B**STATE BOARD OF CEMETERIANS**

Sec.		Sec.	
43-8B-1.	Short title.	43-8B-6.	Election of president of board; meetings; reimbursement; inspectors.
43-8B-2.	Definitions.	43-8B-7.	Powers and duties; rules and regulations; seal.
43-8B-3.	Declaration of purpose.		
43-8B-4.	Establishment of board.		
43-8B-5.	Number and terms of members; appointments; vacancies; removal.		

RESEARCH REFERENCES

Am. Jur. 2d. — 14 Am. Jur. 2d, Cemeteries, § 1 et seq.

C.J.S. — 14 C.J.S., Cemeteries, § 1 et seq.

43-8B-1. Short title.

This chapter shall be known and may be cited as the “Georgia Cemeterians Board Act.” (Code 1981, § 43-8B-1, enacted by Ga. L. 2006, p. 1087, § 8/HB 910.)

43-8B-2. Definitions.

As used in this chapter, the term:

- (1) “Board” means the State Board of Cemeterians established by this chapter.
- (2) “Cemeterian” means a person registered as a cemetery owner pursuant to Chapter 14 of Title 10 or a cemetery manager.
- (3) “Cemetery” means a cemetery as defined in Chapter 14 of Title 10. (Code 1981, § 43-8B-2, enacted by Ga. L. 2006, p. 1087, § 8/HB 910.)

43-8B-3. Declaration of purpose.

The practice of the profession of a cemeterian, as defined in this chapter, is declared to be a business or profession affecting the public interest and involving the health and safety of the public. (Code 1981, § 43-8B-3, enacted by Ga. L. 2006, p. 1087, § 8/HB 910.)

43-8B-4. Establishment of board.

There shall be established in the Office of the Secretary of State the State Board of Cemeterians to be constituted as provided in this

chapter with the powers, duties, and authority vested in such board by this chapter. (Code 1981, § 43-8B-4, enacted by Ga. L. 2006, p. 1087, § 8/HB 910.)

43-8B-5. Number and terms of members; appointments; vacancies; removal.

(a) The board shall consist of six members who shall be practicing cemeterians with a minimum of five years of experience and one member who shall have no connection whatsoever with the cemetery profession but who shall have a recognized interest in consumer affairs and in consumer protection concerns.

(b) The members of the board shall be appointed by the Governor for terms of office of six years and all vacancies occurring on the board shall be filled by the Governor. When an appointment is made to fill a vacancy caused by death or resignation of a member, such appointment shall be for the remainder of the unexpired term of the member whose death or resignation caused the vacancy so filled.

(c) A majority of the members of the board may remove any member who misses three or more consecutive regular meetings of the board without a medical reason and may declare that position on the board to be vacant. A member so removed shall not be eligible for reappointment until the expiration of the term of office for which such person was serving. The Governor shall have the power to remove from office any member of the board for willful neglect of duty or for conviction of a crime involving moral turpitude. (Code 1981, § 43-8B-5, enacted by Ga. L. 2006, p. 1087, § 8/HB 910; Ga. L. 2007, p. 398, § 2/HB 391.)

43-8B-6. Election of president of board; meetings; reimbursement; inspectors.

(a) The board shall each year elect from its members a president whose term shall be one year and who shall serve during the period for which elected and until a successor shall be elected.

(b) The board shall meet at least yearly and more often as the proper and efficient discharge of its duties may require.

(c) Each member of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.

(d) No inspector shall own, operate, or be employed by any cemetery or perform any services on behalf thereof. (Code 1981, § 43-8B-6, enacted by Ga. L. 2006, p. 1087, § 8/HB 910.)

43-8B-7. Powers and duties; rules and regulations; seal.

For the purpose of better protection of life and health the board is authorized:

(1) To fix and prescribe minimum standards of general appearance of cemeteries;

(2) To undertake such other duties and to exercise such other powers as may from time to time be prescribed by law;

(3) To adopt a common seal; and

(4) To make and promulgate rules and regulations not inconsistent with the laws of this state for the regulation of such board and pursuant to the provisions of Chapter 14 of Title 10. All rules and regulations of the Secretary of State promulgated pursuant to the authority of Chapter 14 of Title 10 and existing immediately prior to July 1, 2006, which are not inconsistent with this chapter shall continue in effect until repealed, amended, or otherwise changed by the board. (Code 1981, § 43-8B-7, enacted by Ga. L. 2006, p. 1087, § 8/HB 910.)

CHAPTER 9

CHIROPRACTORS

Sec.		Sec.	
43-9-1.	Definitions.		censes; subpoenas; other discipline; judicial review; reinstatement; voluntary surrender of license; injunctions; statement of complaint.
43-9-2.	Creation of board; members; qualifications; residence requirements; terms.		
43-9-3.	Terms of office of board members; vacancies.	43-9-12.	(Effective January 1, 2013. See note.) Refusal, suspension, or revocation of licenses; subpoenas; other discipline; judicial review; reinstatement; voluntary surrender of license; injunctions; statement of complaint.
43-9-4.	Meetings; seal; rules and regulations; election of officers; oath of office; certificate of appointment.		
43-9-5.	Reimbursement of board members.		
43-9-6.	Removal of board members.	43-9-12.1.	Reasonable care and skill; referrals.
43-9-6.1.	Scope of board's authority.	43-9-13.	Hearing before board when license refused or revoked.
43-9-7.	Qualifications of applicants for license to practice chiropractic.	43-9-14.	Record of license revocation [Repealed].
43-9-7.1.	Temporary licenses.	43-9-15.	Reissuance of licenses.
43-9-7.2.	Persons excepted from application of chapter.	43-9-16.	Scope of practice; injury from want of reasonable degree of care is a tort.
43-9-8.	Examination.	43-9-17.	Scope of practice of chiropractic students.
43-9-9.	Reciprocity.	43-9-18.	Provision of chiropractic services limited to doctors of chiropractic; construction of chapter.
43-9-10.	Recordation of licenses [Repealed].	43-9-19.	Penalty.
43-9-10.1.	Display of license; notification of address change.	43-9-20.	Termination [Repealed].
43-9-11.	Biennial renewal of licenses; continuing education requirement.		
43-9-12.	(Effective until January 1, 2013. See note.) Refusal, suspension, or revocation of li-		

Cross references. — Professional corporations generally, T. 14, C. 7.

Administrative rules and regulations. — Organization, Official Compila-

tion of the Rules and Regulations of the State of Georgia, Georgia Board of Chiropractic Examiners, Chapter 100-1.

JUDICIAL DECISIONS

Cited in *Glover v. Southern Bell Tel. & Tel. Co.*, 132 Ga. App. 74, 207 S.E.2d 584 (1974).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 39 Am. Jur. 2d, Health, §§ 1 et seq., 26 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

Am. Jur. Trials. — Chiropractic Malpractice Litigation, 78 Am. Jur. Trials 1.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 39A C.J.S., Health and Environment, §§ 3 et seq., 37 et seq., 48 et seq. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees,

§ 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

Constitutionality of statute prescribing conditions of practicing medicine or surgery as affected by question of discrimination against particular school or method, 37 ALR 680; 42 ALR 1342; 54 ALR 600.

Scope of practice of chiropractic, 16 ALR4th 58.

Liability of chiropractors and other drugless practitioners for medical malpractice, 77 ALR4th 273.

Physicians' and surgeons' liens, 39 ALR5th 787.

43-9-1. Definitions.

As used in this chapter, the term:

(1) "Board" means the Georgia Board of Chiropractic Examiners.

(2) "Chiropractic" means the adjustment of the articulations of the human body, including ilium, sacrum, and coccyx, and the use of X-ray, provided that the X-ray shall not be used for therapeutical purposes. The term shall also mean that separate and distinct branch of the healing arts whose science and art utilize the inherent recuperative powers of the body and the relationship between the musculoskeletal structures and functions of the body, particularly of the spinal column and the nervous system, in the restoration and maintenance of health. Chiropractic is a learned profession which teaches that the relationship between structure and function in the human body is a significant health factor and that such relationships between the spinal column and the nervous system are most significant, since the normal transmission and expression of nerve energy are essential to the restoration and maintenance of health. However, the term shall not include the use of drugs or surgery. The adjustment referred to in this paragraph and subsection (b) of Code Section 43-9-16 may only be administered by a doctor of chiropractic authorized to do so by the provisions of this chapter; provided, however, that the provisions of this Code section shall not prevent any other

health care provider from administering techniques authorized within their scope of practice.

(3) "Practice of chiropractic" shall also include peer review which is defined as the procedure by which chiropractors licensed in this state evaluate the quality and efficiency of services ordered or performed by other chiropractors, including but not limited to practice analysis, audit, claims review, underwriting assistance, utilization review, and compliance with applicable laws, rules, and regulations.

(4) "Subluxation" means a complex of functional or pathological articular changes that compromise neural integrity and general health. A subluxation is evaluated, diagnosed, and managed through the use of chiropractic procedures based on the best available rational and empirical evidence. (Ga. L. 1921, p. 166, § 1; Code 1933, § 84-501; Ga. L. 1977, p. 232, § 1; Ga. L. 1997, p. 1533, § 1; Ga. L. 2007, p. 494, § 1/SB 102; Ga. L. 2011, p. 752, § 43/HB 142.)

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, in paragraph (2), substituted "term shall" for "term 'chiropractic' shall" in the second and fourth sentences; and substituted "in this

state" for "in the state of Georgia" in paragraph (3).

Law reviews. — For note on the chiropractor as an expert witness, see 15 Mercer L. Rev. 431 (1964).

JUDICIAL DECISIONS

Constitutionality. — Although common merchants are allowed to sell nutritional substances to customers without a prescription, in that the substances do not require medical supervision for use and are not habit-forming, the Georgia Chiropractic Practices Act (O.C.G.A. § 43-9-1 et seq.) does not violate the equal protection clause because the statute prohibits chiropractors from prescribing or recommending such substances in the treatment of patients. *Foster v. Georgia Bd. of Chiropractic Exmrs.*, 257 Ga. 409, 359 S.E.2d 877 (1987) (decided prior to the 1988 amendment of O.C.G.A. § 43-9-16, which added subsection (i)).

Prescribing or recommending nutritional substances. — Since O.C.G.A. Ch. 9, T. 43 does not authorize chiropractors to prescribe or dispense vitamins, minerals, or nutritional substances, the prescription of such items for treatment of a patient's ailments constitutes the unauthorized practice of medicine in this state. *Foster v. Georgia Bd. of Chiropractic*

Exmrs., 257 Ga. 409, 359 S.E.2d 877 (1987) (decided prior to the 1988 amendment of § 43-9-16, which added subsection (i)).

Chiropractors subject to malpractice provisions. — Chiropractic profession must be treated equally with the professions of law and medicine for malpractice purposes. *Phillips v. Cheek*, 162 Ga. App. 728, 293 S.E.2d 22 (1982).

Massage is not authorized treatment. — Because massage is not an authorized treatment modality under O.C.G.A. Ch. 9, T. 43, a contract for massage services was void and a chiropractor was not authorized to recover payment for rendering such services. *Siegrist v. Iwuagwa*, 229 Ga. App. 508, 494 S.E.2d 180 (1997), cert. denied, 525 U.S. 933, 119 S. Ct. 344, 142 L. Ed. 2d 284 (1998).

Cited in *Caldwell v. Knight*, 92 Ga. App. 747, 89 S.E.2d 900 (1955); *Sandford v. Howard*, 161 Ga. App. 495, 288 S.E.2d 739 (1982); *Capes v. Bretz*, 195 Ga. App. 467, 393 S.E.2d 702 (1990).

OPINIONS OF THE ATTORNEY GENERAL

Definition of "chiropractic" is not broad enough to bring it within definition of "practice of medicine." 1972 Op. Att'y Gen. No. U72-17.

Chiropractor may not give injection, draw blood, or perform surgery. — Since there is no specific exemption found in this definition, practitioners of chiropractic would be practicing medicine if the chiropractors gave injections, withdrew blood, pierced the skin, or performed a surgical procedure. 1979 Op. Att'y Gen. No. 79-45.

Chiropractor may not administer medications. — Nowhere in this definition is there any express or implied provision that practice of chiropractic permits administration of medications, injections, withdrawal of blood, or any surgical procedure; in fact, by express terms of definition, a licensed practitioner of chiropractic is not permitted to use drugs or surgery. 1979 Op. Att'y Gen. No. 79-45.

Chiropractor is not authorized to prescribe, dispense, or administer vitamins or minerals in the treatment of patients. 1984 Op. Att'y Gen. No. 84-53 (decided prior to 1988 amendment to § 43-9-16, which added subsection (i)).

Chiropractor may not pierce the skin. — Procedures utilized for analytical, therapeutic, and diagnostic purposes which puncture the skin such as venipuncture, capillary puncture, and acupuncture are not authorized for use by chiropractors licensed in the State of Georgia since none of these procedures is

utilized to make an adjustment of the articulation of the human body. 1984 Op. Att'y Gen. No. 84-53.

Chiropractor may not use colonic irrigations, electrical treatments, or vitamins. — Licensed chiropractor in Georgia is not authorized to use colonic irrigations, electrical treatments (except X-ray), and vitamins in treatment of patients. 1945-47 Op. Att'y Gen. p. 488 (decided prior to 1986 and 1988 amendments to § 43-9-16, which added subsections (b) and (i), respectively).

Procedures for analytical, therapeutic, or diagnostic purposes such as colon lavage, barium enema, and colonic irrigation are not authorized for use by a chiropractor licensed in the State of Georgia since none of these procedures are utilized to make an adjustment of the articulation of the human body. 1984 Op. Att'y Gen. No. 84-53.

Limited use of electrical current. — Procedures in which the equipment utilizes electrical current but the electrical current or its immediate by-product is not introduced into the body, such as intermittent traction, intersegmental traction, and vibrators, are authorized to the extent that the traction is used according to specific chiropractic methods. 1984 Op. Att'y Gen. No. 84-53.

Referring patients for magnetic resonance imaging is not within the scope of practice of chiropractors in the State of Georgia. 1993 Op. Att'y Gen. No. 93-11.

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §§ 5, 13 et seq., 26 et seq., 44, 74 et seq., 121 et seq., 131 et seq.

C.J.S. — 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers, §§ 4 et seq., 52 et seq., 71 et seq.

43-9-2. Creation of board; members; qualifications; residence requirements; terms.

(a) There is created and established a board to be known as the Georgia Board of Chiropractic Examiners. The board shall be composed of five practicing chiropractors who shall be appointed by the Governor with the approval of the Secretary of State and confirmation by the

Senate. Such members shall be of good moral character, residents of the state, and graduates of chartered chiropractic schools or colleges requiring actual attendance in same and shall have practiced chiropractic continuously and resided in the state for a period of at least five years.

(b) The board shall, in addition to the five members provided for in subsection (a) of this Code section, consist of a sixth member who shall be appointed by the Governor from the public at large and who shall not be in any way connected to practicing chiropractic. The initial term for such member shall expire June 30, 1983; successors appointed on or after July 1, 1995, shall be appointed for a term of five years.

(c) On or after July 1, 1995, not more than one member of the board shall be appointed who resides in any one congressional district, with the exception of the member appointed from the public at large. Board members appointed on or after July 1, 1995, shall be appointed for terms of five years and may be appointed to serve for no more than two consecutive five-year terms in addition to any unexpired term of office that member may have filled. (Ga. L. 1921, p. 166, § 2; Code 1933, § 84-502; Code 1933, § 84-503.1, enacted by Ga. L. 1980, p. 67, § 1; Ga. L. 1995, p. 983, § 1.)

43-9-3. Terms of office of board members; vacancies.

(a) The members of the board provided for in subsection (a) of Code Section 43-9-2 shall be so classified by the Governor that the terms of office of two shall expire in one year, two in two years, and one in three years from the date of appointment. Annually the Governor shall appoint, to fill vacancies in the five professional positions on the board, licensed practitioners who possess the qualifications specified in subsection (a) of Code Section 43-9-2 to serve for a period of five years.

(b) The Governor shall fill vacancies in the board caused by death or otherwise as soon as practicable. Such appointees shall serve for the unexpired term of the member whose vacancy is being filled. Before appointing the members of the board, the Governor shall satisfy himself that the appointees are of high character and standing and possess the other qualifications prescribed in this chapter. (Ga. L. 1921, p. 166, § 3; Code 1933, § 84-503; Ga. L. 1995, p. 983, § 1.)

Law reviews. — For comment on *Rogers v. Medical Ass'n*, 244 Ga. 151, 259 S.E.2d 85 (1979), invalidating Georgia statute requiring Governor's appointments to composite State Board of Medi-

cal Examiners be made solely from nominees submitted by state medical society as an unconstitutional delegation of legislative authority to a private organization, see 29 Emory L.J. 1183 (1980).

OPINIONS OF THE ATTORNEY GENERAL

Qualifications required of board members. — All appointments by Governor, after original board, are controlled by qualifications contained in former Code 1933, § 84-502 (see O.C.G.A. § 43-9-2), i.e., of good moral character, residents of

state, and graduates of chartered chiropractic schools or colleges requiring actual attendance, and shall have practiced chiropractic continuously and resided in this state for a period of at least two years. 1950-51 Op. Att'y Gen. p. 346.

43-9-4. Meetings; seal; rules and regulations; election of officers; oath of office; certificate of appointment.

The board shall meet at such times as the board determines necessary for the performance of its duties. Called meetings shall be authorized at the discretion of the president. The board shall adopt a seal, which shall be affixed to all licenses issued and shall from time to time adopt such rules and regulations as it deems proper and necessary for the performance of its duties. The board shall elect annually a president and a vice president. Immediately before entering upon the duties of office, the members of the board shall take the constitutional oath of office and shall file the same in the office of the Governor, who, upon receiving the oath of office, shall issue a certificate of appointment to each member. (Ga. L. 1921, p. 166, § 4; Code 1933, § 84-504; Ga. L. 1982, p. 2333, § 3; Ga. L. 1995, p. 983, § 1.)

Administrative rules and regulations. — Rules of the profession, Official Compilation of the Rules and Regulations

of the State of Georgia, Rules of Georgia Board of Chiropractic Examiners, Chapter 100-1 et seq.

43-9-5. Reimbursement of board members.

The division director shall keep a true and accurate account of all funds received and all vouchers issued. The members of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2. (Ga. L. 1921, p. 166, § 12; Code 1933, § 84-505; Ga. L. 1975, p. 714, § 1; Ga. L. 2000, p. 1706, § 19.)

43-9-6. Removal of board members.

Upon sufficient proof to the Governor of the incompetency, inability, unprofessional conduct, misconduct, or such conduct as in the discretion of the Governor is unbecoming a member of the board, such member shall be dismissed by the Governor. (Ga. L. 1921, p. 166, § 4; Code 1933, § 84-506.)

43-9-6.1. Scope of board's authority.

The board is authorized to:

(1) Adopt, amend, and repeal such rules and regulations not inconsistent with this chapter necessary for the proper administration and enforcement of said chapter;

(2) Examine, issue, renew, and reinstate the licenses of duly qualified applicants for licensure to practice chiropractic in this state;

(3) Deny, suspend, revoke, or otherwise sanction licenses to practice chiropractic in this state;

(4) Initiate investigations for the purpose of discovering violations of this chapter;

(5) Conduct hearings upon charges calling for the discipline of a licensee or on violations of this chapter;

(6) Issue to chiropractors, licensed under this chapter, certificates under the seal of the board evidencing such licensure and signed, either by hand or facsimile signature, by the president of the board and the division director; and

(7) Expunge or delete from the disciplinary record of any licensee advertising violations not defined in the rules of the board as immoral and unprofessional conduct or relating to reasonable care and skill in the treatment of a patient. (Code 1981, § 43-9-6.1, enacted by Ga. L. 1984, p. 913, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2005, p. 475, § 1/HB 266.)

43-9-7. Qualifications of applicants for license to practice chiropractic.

(a) Any person wishing to practice chiropractic in this state shall make application to the board through the division director in such form as may be adopted and directed by the board.

(b) The application shall recite the history of the applicant's educational qualifications, how long he or she has studied chiropractic, what collateral branches, if any, he or she has studied, and the length of time he or she has engaged in clinical practice, with proof thereof in the form of diplomas, certificates, and other information, and shall accompany the application with satisfactory evidence of good character and reputation.

(c) Each applicant shall provide with his or her application an application fee in an amount established by the board.

(d) Each applicant shall be of good moral character and shall be a graduate of a chiropractic school or college accredited by the Council on Chiropractic Education or a board approved successor or a chiropractic school or college which is actively seeking accreditation from the

Council on Chiropractic Education or a board approved successor, which requires a four-year standard college course and is approved by the board.

(e) In addition to the requirements heretofore provided in this Code section, each applicant for examination shall have successfully concluded two years' general college training in schools or colleges approved by the Southern Association of Accredited Colleges and Universities or schools or colleges approved by virtue of reciprocity through such association. The board is authorized to promulgate rules and regulations regarding such requirements with respect to schools or colleges in foreign countries not approved by the Southern Association of Accredited Colleges and Universities.

(f) A student enrolled in the last academic year of a chiropractic school or college meeting the requirements of this chapter as set forth in subsection (d) of this Code section may, at the discretion of the board, take the examination as required in Code Section 43-9-8; provided, however, that such student has successfully completed all other requirements for application for licensure as established either by this chapter or by board rule. Such a student who successfully passes the examination shall not be eligible for licensure until all of the requirements of application for licensure established by this chapter or board rule are met. (Ga. L. 1921, p. 166, § 5; Code 1933, § 84-507; Ga. L. 1939, p. 252, § 1; Ga. L. 1958, p. 6, § 1; Ga. L. 1975, p. 714, § 2; Ga. L. 1976, p. 1054, § 1; Ga. L. 1978, p. 2050, § 1; Ga. L. 1984, p. 913, § 2; Ga. L. 1986, p. 831, § 1; Ga. L. 1995, p. 983, § 2; Ga. L. 2000, p. 1706, § 19; Ga. L. 2010, p. 266, § 17/SB 195.)

The 2010 amendment, effective May 20, 2010, deleted "written" preceding "application" in subsection (a); in subsection (b), substituted "The application" for "Application shall be in writing and shall be signed by the applicant in his own handwriting; shall be sworn to before some officer authorized under the laws to administer oaths;" at the beginning, inserted "or she" three times, inserted "and", and substituted "and other information," for "etc.;" near the end; and, in subsection (c),

substituted "shall provide" for "shall send" and inserted "or her".

Administrative rules and regulations. — License requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Chiropractic Examiners, Chapter 100-2.

Approved chiropractic schools or colleges, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Chiropractic Examiners, Chapter 100-12.

JUDICIAL DECISIONS

Standard college course means four nine-month terms. — Words, "four-year standard college course," as those words were used in subsection (d) of this section, meant four-year college course of nine months each. *Moore v.*

Robinson, 206 Ga. 27, 55 S.E.2d 711 (1949) (see O.C.G.A. § 43-9-7).

Legislature presumed to have known definition of standard college course. — Standard college course in chiropractic education means a course,

given by a college teaching that science, for a regular scholastic year for nine months; and it is not unreasonable to presume that the legislature had these facts before the legislature when this language of subsection (d) of this section was enacted. *Moore v. Robinson*, 206 Ga. 27, 55 S.E.2d 711 (1949) (see O.C.G.A. § 43-9-7).

Board cannot admit comity candidate failing to meet educational requirements. — Board is properly en-

joined from admitting by comity applicants for a license to practice chiropractic in this state who do not possess required educational qualifications of being a graduate of a chartered chiropractic school or college which requires a four-year standard college course of nine months each. *Rose v. Grow*, 210 Ga. 664, 82 S.E.2d 222 (1954) (decided prior to 1984 amendment).

OPINIONS OF THE ATTORNEY GENERAL

Applicant must have studied four nine-month terms at chiropractic college. — Applicant for examination and license to practice chiropractic must be a graduate of a chartered chiropractic school or college which requires a four-year course of nine months each. 1945-47 Op. Att'y Gen. p. 487; 1948-49 Op. Att'y Gen. p. 318; 1954-56 Op. Att'y Gen. p. 539 (decided prior to 1984 amendment).

Whether school or college awards credits for performance on college level examination program is irrelevant to the board's determination that the applicant has satisfied the requirement of successful completion of two years of general college training in an approved school. 1980 Op. Att'y Gen. No. 80-81.

Board may not waive requirements of statute. — Before any person can become an applicant for chiropractic examinations, it is necessary that the person comply with this statute and the board is without authority to give examination to such person before the applicant complied with the statute. 1950-51 Op. Att'y Gen. p. 140 (see O.C.G.A. § 43-9-7).

Board determines if course content acceptable. — Since there is no such thing as a standard course of four years, nine months each year, to be found in field of chiropractic education, it follows that the criteria for any particular course in chiropractic must be adjudged by the board of examiners. 1948-49 Op. Att'y Gen. p. 318.

RESEARCH REFERENCES

ALR. — Constitutionality of statute prescribing conditions of practicing medicine or surgery as affected by question of discrimination against particular school or method, 54 ALR 600.

Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

43-9-7.1. Temporary licenses.

The board may, at its discretion, issue a temporary license without examination to an applicant who is a holder of a valid license in good standing in another state which was obtained by examination. Such a temporary license shall be issued under the following provisions:

(1) The temporary license shall be valid for a maximum of 12 months from the date of issuance but shall automatically expire within the 12 month period when the temporary license holder:

(A) Is granted a regular license; or

(B) Does not take and pass the next available examination following the grant of such temporary license, in which event the license expires upon the notification of the results of that examination; and

(2) The practice of chiropractic pursuant to the temporary license shall only be performed under the supervision and direction of a board approved licensed doctor of chiropractic. The holder of a temporary license shall be subject to all of the laws and rules of this state pertaining to the practice of chiropractic. The granting of a temporary license shall not be prima-facie evidence that the holder meets minimum basic requirements for examination by the board or for the issuance of a regular license. (Code 1981, § 43-9-7.1, enacted by Ga. L. 1995, p. 983, § 3.)

43-9-7.2. Persons excepted from application of chapter.

Nothing in this chapter shall be construed as preventing or prohibiting the practice, services, or activities of:

(1) Any person pursuing a course of study leading to a doctor of chiropractic degree, postgraduate training, or training as a chiropractic assistant, which is approved by the board as provided for in this chapter, if such person is designated by a title indicating student status, is fulfilling clinical training requirements for the attainment of a degree or certificate, and is under the supervision of a chiropractor licensed under this chapter and approved by the board;

(2) Any person licensed to practice chiropractic in this or another state who is employed as a professor or instructor by a chiropractic school or college located in this state or who is enrolled in or teaching a course of study designed to develop chiropractic clinical skills when chiropractic activities are required as part of an educational program sponsored by a chiropractic school or college, as provided for in Code Section 43-9-7, or other educational program as may be approved by the board. Such practice shall be conducted under the supervision of a licensed chiropractor approved by the board. No such person shall be authorized to provide chiropractic services outside of the scope of the educational program and setting, nor shall such a person perform, or supervise the performance of, any chiropractic service provided on a fee-for-service basis without having first obtained a license in accordance with this chapter. The board shall have the authority to promulgate rules relative to such practice;

(3) A chiropractor licensed in good standing in any other state, territory, or other jurisdiction of the United States or of any other nation or foreign jurisdiction if that person is employed or designated in their professional capacity by a sports or performing arts entity

visiting the state for a specific sports or performing arts event subject to the following restrictions:

(A) A chiropractor's practice under this paragraph is limited to the members, coaches, and staff of the team or event for which that chiropractor is employed or designated, and such practice shall only occur at the designated venue of the event; and

(B) Any chiropractor practicing under the authority of this paragraph may utilize only those practices and procedures authorized by this chapter and approved by board rule; and

(4) Nothing in this chapter shall prohibit any person from assisting a duly licensed chiropractor in the practices and procedures so authorized by this chapter, excluding the adjustment of the articulations of the human body, provided such person is under the direct order and supervision of a duly licensed doctor of chiropractic who is physically present in the facility or office. (Code 1981, § 43-9-7.2, enacted by Ga. L. 1995, p. 983, § 3.)

Administrative rules and regulations. — Travel to treat; visiting practice, Official Compilation of the Rules and Reg-

ulations of the State of Georgia, Georgia Board of Chiropractic Examiners, Chapter 100-13.

43-9-8. Examination.

All applicants for licenses shall take an examination approved by the board. (Ga. L. 1921, p. 166, § 6; Code 1933, § 84-508; Ga. L. 1939, p. 252, § 2; Ga. L. 1971, p. 455, § 1; Ga. L. 1976, p. 1054, § 2; Ga. L. 1982, p. 3, § 43; Ga. L. 1984, p. 913, § 3.)

Administrative rules and regulations. — Examinations, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Chiropractic Examiners, Chapter 100-3.

Law reviews. — For note on the chiropractor as an expert witness, see 15 Mercer L. Rev. 431 (1964).

RESEARCH REFERENCES

ALR. — Constitutionality of statute prescribing conditions of practicing medicine or surgery as affected by question of

discrimination against particular school or method, 54 ALR 600.

43-9-9. Reciprocity.

Persons licensed to practice chiropractic under the laws of any other state having requirements equal to those of this chapter may, in the discretion of the board, be issued a license to practice chiropractic in this state without written examination upon the payment of a fee in an

amount established by the board. (Ga. L. 1921, p. 166, § 14; Code 1933, § 84-510; Ga. L. 1975, p. 714, § 3; Ga. L. 1984, p. 913, § 4.)

Cross references. — Cooperation between Georgia and other states generally, T. 28, C. 6.

JUDICIAL DECISIONS

Board may admit practitioners from other states with equal requirements. — State board may, in the board's discretion, admit by comity any person licensed to practice chiropractic under laws of another state having requirements equal to those required in this state. *Moore v. Robinson*, 206 Ga. 27, 55 S.E.2d 711 (1949).

Admission by comity discretionary. — Board may, in the board's discretion, admit by comity nonresident applicants who qualify under chiropractic provisions, and the board's discretion will be controlled only when abused. *Moore v.*

Robinson, 206 Ga. 27, 55 S.E.2d 711 (1949).

Board cannot admit by comity applicant failing to meet educational requirements. — Board was properly enjoined from admitting by comity applicants for a license to practice chiropractic in this state who did not possess the required educational qualifications of being a graduate of a chartered chiropractic school or college which requires a four-year standard college course of nine months each. *Rose v. Grow*, 210 Ga. 664, 82 S.E.2d 222 (1954) (decided prior to 1984 amendment of § 43-9-7).

OPINIONS OF THE ATTORNEY GENERAL

Applicant's qualifications, rather than requirements of licensing state of origin, must equal those of this state before such persons may be issued a license to practice chiropractic in this state without taking an examination. 1969 Op. Att'y Gen. No. 69-192.

Criteria is sister state law in force at time of application for reciprocity license. — General Assembly intended by equality of laws provision to use as criteria those laws in sister states existing and in force at time of submission of application to Georgia board for reciprocity licensing. It was not intended to require each person seeking reciprocity licensing to have received a license under a law equal to the Georgia law, but rather that requirement of equality would be satisfied if present equal law in sister state recognizes and accepts such licenses previously

issued under other, unequal laws in foreign state. 1948-49 Op. Att'y Gen. p. 321.

Board's discretion limited only as to equality of laws. — General Assembly intended to limit the board acting within the board's discretionary authority as to comity only to extent that necessary element of equality of laws be present. 1948-49 Op. Att'y Gen. p. 321.

Authority permissive rather than mandatory. — Statute authorized the board, under rules of comity or general reciprocity, to issue licenses without examination to those persons licensed to practice chiropractic in other states having requirements equal to those of the Georgia laws; this statutory authority does not make it mandatory upon board to admit any person from any state under rules of comity and reciprocity. 1948-49 Op. Att'y Gen. p. 321 (see O.C.G.A. § 43-9-9).

RESEARCH REFERENCES

ALR. — Judicial review of decision upon application for license to practice

within state by physician or surgeon from another state or country, 136 ALR 742.

43-9-10. Recordation of licenses.

Reserved. Repealed by Ga. L. 1984, p. 913, § 5, effective July 1, 1984.

Editor's notes. — This Code section was based on Ga. L. 1921, p. 166, § 11; Code 1933, § 84-511.

43-9-10.1. Display of license; notification of address change.

Every person licensed under this chapter shall:

(1) Display such license in a conspicuous place in such person's principal place of business; and

(2) Notify the board of any change of business or residence address. (Code 1981, § 43-9-10.1, enacted by Ga. L. 1982, p. 2333, § 4; Ga. L. 1984, p. 913, § 6.)

43-9-11. Biennial renewal of licenses; continuing education requirement.

Every person who receives or has received a license to practice chiropractic from the board shall pay the board on or before the renewal date a fee in an amount established by the board, payment of which shall renew his or her license to practice chiropractic for the ensuing two years, provided that the board has satisfactory evidence that the applicant for renewal has completed a minimum of 20 hours of continuing education per year as approved by the board. All chiropractic colleges teaching an approved course of instruction shall be classified as approved. (Ga. L. 1939, p. 252, § 3; Ga. L. 1971, p. 260, § 1; Ga. L. 1975, p. 714, § 5; Ga. L. 1984, p. 913, § 7; Ga. L. 1998, p. 1204, § 1.)

Administrative rules and regulations. — Continuing education, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Chiropractic Examiners, Chapter 100-5.

43-9-12. (Effective until January 1, 2013. See note.) Refusal, suspension, or revocation of licenses; subpoenas; other discipline; judicial review; reinstatement; voluntary surrender of license; injunctions; statement of complaint.

(a) The board shall have the authority to refuse to grant a license to an applicant therefor or to revoke the license of a person licensed by that board or to discipline a person licensed by that board, upon a finding by a majority of the entire board that the licensee or applicant has:

(1) Failed to demonstrate the qualifications or standards for a license contained in this chapter or the rules or regulations promulgated under this chapter; it shall be incumbent upon the applicant to demonstrate to the satisfaction of the board that he meets all the requirements for the issuance of a license, and, if the board is not satisfied as to the applicant's qualifications, it may deny a license without a prior hearing; provided, however, that the applicant shall be allowed to appear before the board if he so desires;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of chiropractic or on any document connected therewith; or practiced fraud or deceit or intentionally made any false statement in obtaining a license to practice the licensed business or profession; or made a false statement or deceptive registration with the board;

(3) Been convicted of any felony or of any crime involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States; as used in this paragraph and paragraph (4) of this subsection, the term "felony" shall include any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere; and, as used in this paragraph, the term "conviction" shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;

(4) Been arrested, charged, and sentenced for the commission of any felony, or any crime involving moral turpitude, where:

(A) A plea of nolo contendere was entered to the charge;

(B) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(C) An adjudication or sentence was otherwise withheld or not entered on the charge.

The plea of nolo contendere or the order entered pursuant to the provisions of Article 3 of Chapter 8 of Title 42, relating to probation of first offenders, or other first offender treatment shall be conclusive evidence of arrest and sentencing for such crime;

(5) Had his license to practice chiropractic revoked, suspended, or annulled by any lawful licensing authority other than the board; or had other disciplinary action taken against him by any such lawful licensing authority other than the board; or was denied a license by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings, or was refused the renewal of a license by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings;

(6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or applicant to practice chiropractic, or of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of chiropractic but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness; unprofessional conduct shall also include any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing practice of chiropractic;

(7) Knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person or any licensee whose license has been suspended or revoked by the board to practice chiropractic or to practice outside the scope of any disciplinary limitation placed upon the licensee by the board;

(8) Violated a statute, law, or any rule or regulation of this state, any other state, the board, the United States, or any other lawful authority without regard to whether the violation is criminally punishable, which statute, law, or rule or regulation relates to or in part regulates the practice of chiropractic when the licensee or applicant knows or should know that such action is violative of such statute, law, or rule; or violated a lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or license reinstatement;

(9) Been adjudged mentally incompetent by a court of competent jurisdiction inside or outside this state; any such adjudication shall automatically suspend the license of any such person and shall prevent the reissuance or renewal of any license so suspended for as long as the adjudication of incompetence is in effect;

(10) Displayed an inability to practice chiropractic with reasonable skill and safety to the public or has become unable to practice chiropractic with reasonable skill and safety to the public by reason of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material; or

(11)(A) Become unable to practice chiropractic with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition.

(B) In enforcing this paragraph, the board may, upon reasonable grounds, require a licensee or applicant to submit to a mental or physical examination by licensed health care providers designated by the board. The results of such examination shall be admissible

in any hearing before the board, notwithstanding any claim of privilege under a contrary rule of law or statute, including, but not limited to, Code Section 24-9-21. Every person who shall accept the privilege of practicing chiropractic in this state or who shall file an application for a license to practice chiropractic in this state shall be deemed to have given his or her consent to submit to such mental or physical examination and to have waived all objections to the admissibility of the results in any hearing before the board, upon the grounds that the same constitutes a privileged communication. If a licensee or applicant fails to submit to such an examination when properly directed to do so by the board, unless such failure was due to circumstances beyond his or her control, the board may enter a final order upon proper notice, hearing, and proof of such refusal. Any licensee or applicant who is prohibited from practicing chiropractic under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate to the board that he or she can resume or begin the practice of chiropractic with reasonable skill and safety to patients.

(C) For the purposes of this paragraph, the board may, upon reasonable grounds, obtain any and all records relating to the mental or physical condition of a licensee or applicant, including psychiatric records; and such records shall be admissible in any hearing before the board, notwithstanding any privilege under a contrary rule of law or statute, including, but not limited to, Code Section 24-9-21. Every person who shall accept the privilege of practicing chiropractic in this state or who shall file an application to practice chiropractic in this state shall be deemed to have given his or her consent to the board's obtaining any such records and to have waived all objections to the admissibility of such records in any hearing before the board, upon the grounds that the same constitutes a privileged communication.

(D) If any licensee or applicant could, in the absence of this paragraph, invoke a privilege to prevent the disclosure of the results of the examination provided for in subparagraph (B) of this paragraph or the records relating to the mental or physical condition of such licensee or applicant obtained pursuant to subparagraph (C) of this paragraph, all such information shall be received by the board in camera and shall not be disclosed to the public, nor shall any part of the record containing such information be used against any licensee or applicant in any other type of proceeding.

(b) The provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," with respect to emergency action and summary suspension of a license are adopted and incorporated by reference into this Code section.

(c) For purposes of this Code section, the board may obtain, through subpoena by the division director, upon reasonable grounds, any and all records relating to the mental or physical condition of a licensee or applicant, and such records shall be admissible in any hearing before the board.

(d) When the board finds that any person is unqualified to be granted a license or finds that any person should be disciplined pursuant to subsection (a) of this Code section or pursuant to any other provision of this chapter, the board may take any one or more of the following actions:

- (1) Refuse to grant or renew a license to an applicant;
- (2) Administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the licensee;
- (3) Suspend any license for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said license;
- (4) Limit or restrict any license as the board deems necessary for the protection of the public;
- (5) Revoke any license;
- (6) Condition the penalty upon, or withhold formal disposition pending, the applicant's or licensee's submission to such care, counseling, or treatment as the board may direct; or
- (7) Impose a fine not to exceed \$500.00 for each violation of a law, rule, or regulation relating to the practice of chiropractic.

(e) In addition to and in conjunction with the actions described in subsection (d) of this Code section, the board may make a finding adverse to the licensee or applicant but withhold imposition of judgment and penalty; or it may impose the judgment and penalty but suspend enforcement thereof and place the licensee on probation, which probation may be vacated upon noncompliance with such reasonable terms as the board may impose.

(f) Initial judicial review of a final decision of the board shall be had solely in the superior court of the county of domicile of the board.

(g) In its discretion, the board may reinstate a license which has been revoked or issue a license which has been denied or refused, following such procedures as the board may prescribe by rule; and, as a condition thereof, it may impose any disciplinary or corrective method provided in this Code section or the laws relating to chiropractic.

(h) Neither the issuance of a private reprimand nor the denial of a license by reciprocity nor the denial of a request for reinstatement of a

revoked license nor the refusal to issue a previously denied license shall be considered to be a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; notice and hearing within the meaning of said chapter shall not be required, but the applicant or licensee shall be allowed to appear before the board if he so requests.

(i) The voluntary surrender of a license or the failure to renew a license by the end of an established penalty period shall have the same effect as a revocation of said license, subject to reinstatement in the discretion of the board. The board may restore and reissue a license to practice chiropractic and, as a condition thereof, may impose any disciplinary sanction provided by this chapter.

(j) The board, the division director, or the appropriate prosecuting attorney may bring an action to enjoin the unlicensed practice of chiropractic by any person. The action to restrain and enjoin such unlicensed practice shall be brought in the superior court of the county where the unlicensed person resides. It shall not be necessary to allege or prove that there is no adequate remedy at law to obtain an injunction under this Code section.

(k) Notwithstanding the provisions of paragraph (2) of subsection (h) of Code Section 43-1-19, if a chiropractor is the subject of a board investigation initiated as the result of a complaint or report to the board, a copy of a summary of the complaint or report shall be furnished to the chiropractor as soon as practicable after the investigation is initiated but in any event prior to or at the same time as the delivery of a subpoena for the production of documents. If a chiropractor is the subject of an investigation initiated by the board on its own initiative, a written statement of the acts or omissions being investigated shall be furnished to the chiropractor as soon as practicable after the investigation is initiated but in any event prior to or at the same time as the delivery of a subpoena for the production of documents. The board may delay providing the chiropractor with a copy of the summary or statement if the board determines that the nature of the investigation requires that its existence not be disclosed to the chiropractor but in no event shall such summary or statement be provided later than the delivery of a subpoena for the production of documents to the chiropractor. Nothing in this Code section shall be construed to limit the authority of the board to pursue violations of the board's laws and rules and regulations discovered during the course of an investigation. (Ga. L. 1921, p. 166, § 9; Code 1933, § 84-512; Ga. L. 1981, p. 690, § 1; Ga. L. 1982, p. 3, § 43; Ga. L. 1984, p. 913, § 8; Ga. L. 1992, p. 6, § 43; Ga. L. 1994, p. 97, § 43; Ga. L. 2000, p. 556, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2005, p. 475, § 2/HB 266.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, a period was substituted for a semicolon at the end of subsection (h).

Pursuant to Code Section 28-9-5, in 2000, in the last sentence of subsection (k), substituted “section” for “Section”, substituted “board” for “Board”, and substituted “board’s” for “Board’s”.

Pursuant to Code Section 28-9-5, in 2005, former paragraph (a)(11) was redesignated as present subparagraph (a)(11)(A), former subparagraphs (a)(11)(A) through (a)(11)(C) were redesignated as present subparagraphs (a)(11)(B) through (a)(11)(D); in subparagraph (a)(11)(A), a period was substituted for a colon at the end; in subparagraph

(a)(11)(B), a period was substituted for a semicolon at the end; in subparagraph (a)(11)(C), a period was substituted for “; and” at the end; and, in subparagraph (a)(11)(D), “subparagraph (B)” was substituted for “subparagraph (A)” and “subparagraph (C)” was substituted for “subparagraph (B)”.

Editor’s notes. — Code Section 43-9-12 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

Ga. L. 2000, p. 556, § 2, not codified by the General Assembly, provides that subsection (k) is applicable to all investigations initiated on or after July 1, 2000.

JUDICIAL DECISIONS

Employing display type advertising to advertise free x-rays not ground for revocation of license. *Georgia Bd. of Chiropractic Exmrs. v. Ball*, 224 Ga. 85, 160 S.E.2d 340 (1968) (decided prior to 1984 amendment).

Holder of valid license may enjoin revocation without notice and hearing. — Holder of valid license which has

been properly issued may enjoin its revocation and interference with the holder’s lawful business thereunder in absence of notice and hearing. *Rose v. Grow*, 210 Ga. 664, 82 S.E.2d 222 (1954) (decided prior to 1984 amendment).

Cited in *Foster v. Georgia Bd. of Chiropractic Exmrs.*, 257 Ga. 409, 359 S.E.2d 877 (1987).

RESEARCH REFERENCES

ALR. — Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 ALR 1388.

Pretrial discovery in disciplinary proceedings against physician, 28 ALR3d 1440.

Criminal prosecution or disciplinary action against medical practitioner for fraud in connection with claims under Medicaid, Medicare, or similar welfare program for providing medical service, 50 ALR3d 549.

Practices forbidden by state deceptive trade practice and consumer protection acts, 89 ALR3d 449.

Physician’s or other healer’s conduct, or conviction of offense not directly related to medical practice, as ground for disciplinary action, 34 ALR4th 609.

Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer, 59 ALR4th 1104.

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner, 70 ALR4th 132.

43-9-12. (Effective January 1, 2013. See note.) Refusal, suspension, or revocation of licenses; subpoenas; other discipline; judicial review; reinstatement; voluntary surrender of license; injunctions; statement of complaint.

(a) The board shall have the authority to refuse to grant a license to an applicant therefor or to revoke the license of a person licensed by that board or to discipline a person licensed by that board, upon a finding by a majority of the entire board that the licensee or applicant has:

(1) Failed to demonstrate the qualifications or standards for a license contained in this chapter or the rules or regulations promulgated under this chapter; it shall be incumbent upon the applicant to demonstrate to the satisfaction of the board that he meets all the requirements for the issuance of a license, and, if the board is not satisfied as to the applicant's qualifications, it may deny a license without a prior hearing; provided, however, that the applicant shall be allowed to appear before the board if he so desires;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of chiropractic or on any document connected therewith; or practiced fraud or deceit or intentionally made any false statement in obtaining a license to practice the licensed business or profession; or made a false statement or deceptive registration with the board;

(3) Been convicted of any felony or of any crime involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States; as used in this paragraph and paragraph (4) of this subsection, the term "felony" shall include any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere; and, as used in this paragraph, the term "conviction" shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;

(4) Been arrested, charged, and sentenced for the commission of any felony, or any crime involving moral turpitude, where:

(A) A plea of nolo contendere was entered to the charge;

(B) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(C) An adjudication or sentence was otherwise withheld or not entered on the charge.

The plea of nolo contendere or the order entered pursuant to the provisions of Article 3 of Chapter 8 of Title 42, relating to probation

of first offenders, or other first offender treatment shall be conclusive evidence of arrest and sentencing for such crime;

(5) Had his license to practice chiropractic revoked, suspended, or annulled by any lawful licensing authority other than the board; or had other disciplinary action taken against him by any such lawful licensing authority other than the board; or was denied a license by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings, or was refused the renewal of a license by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings;

(6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or applicant to practice chiropractic, or of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of chiropractic but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness; unprofessional conduct shall also include any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing practice of chiropractic;

(7) Knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person or any licensee whose license has been suspended or revoked by the board to practice chiropractic or to practice outside the scope of any disciplinary limitation placed upon the licensee by the board;

(8) Violated a statute, law, or any rule or regulation of this state, any other state, the board, the United States, or any other lawful authority without regard to whether the violation is criminally punishable, which statute, law, or rule or regulation relates to or in part regulates the practice of chiropractic when the licensee or applicant knows or should know that such action is violative of such statute, law, or rule; or violated a lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or license reinstatement;

(9) Been adjudged mentally incompetent by a court of competent jurisdiction inside or outside this state; any such adjudication shall automatically suspend the license of any such person and shall prevent the reissuance or renewal of any license so suspended for as long as the adjudication of incompetence is in effect;

(10) Displayed an inability to practice chiropractic with reasonable skill and safety to the public or has become unable to practice chiropractic with reasonable skill and safety to the public by reason

of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material; or

(11)(A) Become unable to practice chiropractic with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition.

(B) In enforcing this paragraph, the board may, upon reasonable grounds, require a licensee or applicant to submit to a mental or physical examination by licensed health care providers designated by the board. The results of such examination shall be admissible in any hearing before the board, notwithstanding any claim of privilege under a contrary rule of law or statute, including, but not limited to, Code Section 24-5-501. Every person who shall accept the privilege of practicing chiropractic in this state or who shall file an application for a license to practice chiropractic in this state shall be deemed to have given his or her consent to submit to such mental or physical examination and to have waived all objections to the admissibility of the results in any hearing before the board, upon the grounds that the same constitutes a privileged communication. If a licensee or applicant fails to submit to such an examination when properly directed to do so by the board, unless such failure was due to circumstances beyond his or her control, the board may enter a final order upon proper notice, hearing, and proof of such refusal. Any licensee or applicant who is prohibited from practicing chiropractic under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate to the board that he or she can resume or begin the practice of chiropractic with reasonable skill and safety to patients.

(C) For the purposes of this paragraph, the board may, upon reasonable grounds, obtain any and all records relating to the mental or physical condition of a licensee or applicant, including psychiatric records; and such records shall be admissible in any hearing before the board, notwithstanding any privilege under a contrary rule of law or statute, including, but not limited to, Code Section 24-5-501. Every person who shall accept the privilege of practicing chiropractic in this state or who shall file an application to practice chiropractic in this state shall be deemed to have given his or her consent to the board's obtaining any such records and to have waived all objections to the admissibility of such records in any hearing before the board, upon the grounds that the same constitutes a privileged communication.

(D) If any licensee or applicant could, in the absence of this paragraph, invoke a privilege to prevent the disclosure of the results of the examination provided for in subparagraph (B) of this

paragraph or the records relating to the mental or physical condition of such licensee or applicant obtained pursuant to subparagraph (C) of this paragraph, all such information shall be received by the board in camera and shall not be disclosed to the public, nor shall any part of the record containing such information be used against any licensee or applicant in any other type of proceeding.

(b) The provisions of Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” with respect to emergency action and summary suspension of a license are adopted and incorporated by reference into this Code section.

(c) For purposes of this Code section, the board may obtain, through subpoena by the division director, upon reasonable grounds, any and all records relating to the mental or physical condition of a licensee or applicant, and such records shall be admissible in any hearing before the board.

(d) When the board finds that any person is unqualified to be granted a license or finds that any person should be disciplined pursuant to subsection (a) of this Code section or pursuant to any other provision of this chapter, the board may take any one or more of the following actions:

(1) Refuse to grant or renew a license to an applicant;

(2) Administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the licensee;

(3) Suspend any license for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said license;

(4) Limit or restrict any license as the board deems necessary for the protection of the public;

(5) Revoke any license;

(6) Condition the penalty upon, or withhold formal disposition pending, the applicant’s or licensee’s submission to such care, counseling, or treatment as the board may direct; or

(7) Impose a fine not to exceed \$500.00 for each violation of a law, rule, or regulation relating to the practice of chiropractic.

(e) In addition to and in conjunction with the actions described in subsection (d) of this Code section, the board may make a finding adverse to the licensee or applicant but withhold imposition of judgment and penalty; or it may impose the judgment and penalty but suspend enforcement thereof and place the licensee on probation, which probation may be vacated upon noncompliance with such reasonable terms as the board may impose.

(f) Initial judicial review of a final decision of the board shall be had solely in the superior court of the county of domicile of the board.

(g) In its discretion, the board may reinstate a license which has been revoked or issue a license which has been denied or refused, following such procedures as the board may prescribe by rule; and, as a condition thereof, it may impose any disciplinary or corrective method provided in this Code section or the laws relating to chiropractic.

(h) Neither the issuance of a private reprimand nor the denial of a license by reciprocity nor the denial of a request for reinstatement of a revoked license nor the refusal to issue a previously denied license shall be considered to be a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; notice and hearing within the meaning of said chapter shall not be required, but the applicant or licensee shall be allowed to appear before the board if he so requests.

(i) The voluntary surrender of a license or the failure to renew a license by the end of an established penalty period shall have the same effect as a revocation of said license, subject to reinstatement in the discretion of the board. The board may restore and reissue a license to practice chiropractic and, as a condition thereof, may impose any disciplinary sanction provided by this chapter.

(j) The board, the division director, or the appropriate prosecuting attorney may bring an action to enjoin the unlicensed practice of chiropractic by any person. The action to restrain and enjoin such unlicensed practice shall be brought in the superior court of the county where the unlicensed person resides. It shall not be necessary to allege or prove that there is no adequate remedy at law to obtain an injunction under this Code section.

(k) Notwithstanding the provisions of paragraph (2) of subsection (h) of Code Section 43-1-19, if a chiropractor is the subject of a board investigation initiated as the result of a complaint or report to the board, a copy of a summary of the complaint or report shall be furnished to the chiropractor as soon as practicable after the investigation is initiated but in any event prior to or at the same time as the delivery of a subpoena for the production of documents. If a chiropractor is the subject of an investigation initiated by the board on its own initiative, a written statement of the acts or omissions being investigated shall be furnished to the chiropractor as soon as practicable after the investigation is initiated but in any event prior to or at the same time as the delivery of a subpoena for the production of documents. The board may delay providing the chiropractor with a copy of the summary or statement if the board determines that the nature of the investigation requires that its existence not be disclosed to the chiropractor but in no

event shall such summary or statement be provided later than the delivery of a subpoena for the production of documents to the chiropractor. Nothing in this Code section shall be construed to limit the authority of the board to pursue violations of the board's laws and rules and regulations discovered during the course of an investigation. (Ga. L. 1921, p. 166, § 9; Code 1933, § 84-512; Ga. L. 1981, p. 690, § 1; Ga. L. 1982, p. 3, § 43; Ga. L. 1984, p. 913, § 8; Ga. L. 1992, p. 6, § 43; Ga. L. 1994, p. 97, § 43; Ga. L. 2000, p. 556, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2005, p. 475, § 2/HB 266; Ga. L. 2011, p. 99, § 66/HB 24.)

The 2011 amendment, effective January 1, 2013, substituted "Code Section 24-5-501" for "Code Section 24-9-21" at the end of the second sentence of subparagraph (a)(11)(B) and at the end of the first sentence of subparagraph (a)(11)(C). See editor's note for applicability.

Editor's notes. — Code Section 43-9-12 is set out twice in this Code. The

first version is effective until January 1, 2013, and the second version becomes effective on that date.

Ga. L. 2011, p. 99, § 101, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

43-9-12.1. Reasonable care and skill; referrals.

The doctor of chiropractic must bring to the exercise of that person's profession a reasonable degree of care and skill, which shall include the determination of the need for chiropractic care, as defined in paragraph (2) of Code Section 43-9-1, and shall render treatment, referral to the appropriate health care provider, or both treatment and referral commensurate with that chiropractor's findings. Any failure to refer to the appropriate health care provider may subject the doctor of chiropractic to the provisions of Code Section 43-9-12. Nothing in this Code section shall be deemed to expand or limit the chiropractic scope of practice. (Code 1981, § 43-9-12.1, enacted by Ga. L. 1997, p. 910, § 1.)

JUDICIAL DECISIONS

Referral to a medical group was outside the scope of chiropractic practice. — Chiropractor's referral of a patient to a medical group technician for procedures outside the scope of chiropractic practice, without prior ap-

proval by or consultation with a medical doctor, constituted a medical decision outside the scope of chiropractic practice. *Colvard v. Mosley*, 270 Ga. App. 106, 605 S.E.2d 838 (2004).

OPINIONS OF THE ATTORNEY GENERAL

Referral of patients for X-rays authorized. — Chiropractor can refer a patient for X-rays or magnetic resonance imaging if the referral is needed to determine appropriate chiropractic care or for

treatment for or evaluation of conditions which are outside the scope of practice of the chiropractor; this opinion supersedes 1993 Op. Att'y Gen. No. 93-11. 2006 Op. Att'y Gen. No. U2006-1.

43-9-13. Hearing before board when license refused or revoked.

Upon written presentation to the board of any of the grounds enumerated in Code Section 43-9-12 for revoking or refusing a license, the board shall conduct a hearing in conformance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Ga. L. 1921, p. 166, § 9; Code 1933, § 84-513.)

JUDICIAL DECISIONS

Holder of valid license may enjoin revocation without notice and hearing. — Holder of valid license which has been properly issued may enjoin the li- cense's revocation and interference with the holder's lawful business thereunder in absence of notice and hearing. *Rose v. Grow*, 210 Ga. 664, 82 S.E.2d 222 (1954).

43-9-14. Record of license revocation.

Reserved. Repealed by Ga. L. 2010, p. 266, § 18/SB 195, effective May 20, 2010.

Editor's notes. — This Code section Code 1933, § 84-518; Ga. L. 2000, p. 1706, was based on Ga. L. 1921, p. 166, § 9; § 19.

43-9-15. Reissuance of licenses.

The board may, within such period as is established by the division director following the refusal or revocation or cancellation of registration under this chapter, by a majority vote, issue a new license or grant a license to the person affected, restoring him to or conferring upon him all the rights and privileges of and pertaining to the practice of chiropractic, as defined and regulated by this chapter, upon the applicant or licensee showing good moral character and possessing the qualifications required under the terms of this chapter. Any person to whom such registration may have been restored shall pay to the division director an amount established by the board upon the issuance of a new license. (Ga. L. 1921, p. 166, § 10; Code 1933, § 84-519; Ga. L. 1975, p. 714, § 4; Ga. L. 2000, p. 1706, § 19.)

43-9-16. Scope of practice; injury from want of reasonable degree of care is a tort.

(a) Chiropractors who have complied with this chapter shall have the right to practice chiropractic as defined in paragraph (2) of Code Section 43-9-1 and to evaluate, diagnose, and adjust patients according to specific chiropractic methods in order to correct spinal subluxations or to adjust the articulations of the human body. Chiropractors shall observe all applicable public health regulations.

(b) The chiropractic adjustment of the spine or articulations of the human body may include manual adjustments and adjustments by means of electrical and mechanical devices which produce traction or vibration. Chiropractors who have complied with this chapter may also use modalities. Modalities include any physical agent applied to produce therapeutic change to biologic tissues including thermal, acoustic, noninvasive light, mechanical, or electric energy, hot or cold packs, ultrasound, galvanism, microwave, diathermy, and electrical stimulation. Chiropractors who have complied with this chapter may utilize and recommend therapeutic procedures effecting change through the application of clinical skills and services that attempt to improve function, including therapeutic exercise, therapeutic activities, manual therapy techniques, massage, and structural supports as they relate to the articulations of the human body; provided, however, that the same shall not be construed to allow chiropractors to treat patients outside the scope of practice of chiropractic as set forth in this chapter.

(c) Chiropractors who have complied with this chapter may utilize those modalities and procedures described in subsection (b) of this Code section, provided the chiropractor shall have completed a course of study containing a minimum of 120 hours of instruction in the proper utilization of those procedures in accordance with the guidelines set forth by the Council on Chiropractic Education or its successor and is qualified and so certified in that proper utilization.

(d) Chiropractors who have complied with this chapter shall have the right to sign health certificates, reporting to the proper health officers the same as other practitioners.

(e) Chiropractors shall not prescribe or administer medicine to patients, perform surgery, or practice obstetrics or osteopathy.

(f) Chiropractors shall not use venipuncture, capillary puncture, acupuncture, or any other technique which is invasive of the human body either by penetrating the skin or through any of the orifices of the body or through the use of colonics. Nothing in this subsection shall be construed to prohibit a chiropractor who is licensed to perform acupuncture under Article 3 of Chapter 34 of this title from engaging in the practice of acupuncture.

(g) A person professing to practice chiropractic for compensation must bring to the exercise of that person's profession a reasonable degree of care and skill. Any injury resulting from a want of such care and skill shall be a tort for which a recovery may be had. If a chiropractor performs upon a patient any act authorized to be so performed under this chapter but which act also constitutes a standard procedure of the practice of medicine, including but not limited to the use of modalities such as those described in subsection (b) of this Code

section and X-rays, under similar circumstances the chiropractor shall be held to the same standard of care as would licensed doctors of medicine who are qualified to and who actually perform those acts under similar conditions and like circumstances.

(h) A licensed practitioner of chiropractic may use only the title "chiropractor," or "doctor of chiropractic," or "D.C."

(i) Chiropractors who have complied with this chapter may recommend the use of nutritional and dietary supplements. Any such recommendation of nutritional and dietary supplements shall not be construed to allow chiropractors to treat patients outside the scope of the practice of chiropractic as set forth in this chapter nor shall this subsection be construed to allow chiropractors to sell at a profit any such nutritional and dietary supplements without providing their generic name. Nothing in this subsection shall preclude compliance with Chapter 8 of Title 48, relating to the collection of sales and use taxes. (Ga. L. 1921, p. 166, § 7; Code 1933, § 84-509; Ga. L. 1977, p. 232, § 1; Ga. L. 1982, p. 3, § 43; Ga. L. 1986, p. 1534, § 1; Ga. L. 1988, p. 485, § 1; Ga. L. 1989, p. 460, § 1; Ga. L. 1993, p. 1719, § 1; Ga. L. 2000, p. 538, § 1.1; Ga. L. 2007, p. 494, § 1/SB 102; Ga. L. 2008, p. 324, § 43/SB 455.)

Cross references. — Recovery for medical malpractice generally, § 51-1-27.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, "subsection (b) of this Code section" was substituted for "43-9-16(b)" in subsection (c).

Law reviews. — For note on the chiropractor as an expert witness, see 15 Mercer L. Rev. 431 (1964).

JUDICIAL DECISIONS

Prescribing nutritional substances. — Since O.C.G.A. Ch. 9, T. 43 does not authorize chiropractors to prescribe or dispense vitamins, minerals, or nutritional substances, the prescription of such items for the treatment of a patient's ailments constitutes the unauthorized practice of medicine in this state. *Foster v. Georgia Bd. of Chiropractic Exmrs.*, 257 Ga. 409, 359 S.E.2d 877 (1987) (decided prior to 1988 amendment, which added subsection (i)).

Effect of 1993 amendment. — O.C.G.A. § 43-9-16, as amended in 1993, applied to make an insurer responsible for paying the costs of devices prescribed by a chiropractor because, even though the amendment was not in effect at the time the insurer denied the claim, application thereof did not impair any vested rights of

the insurer. *Haezebrouck v. State Farm Mut. Auto. Ins. Co.*, 216 Ga. App. 809, 455 S.E.2d 842 (1995).

Medical tests conducted from chiropractor's referral not within the scope of practice. — Diagnostic tests and procedures performed on a patient, consisting of diagnostic ultrasound spinal sonograph, dermatomal somatosensory evoked potential — upper extremity, upper dermatomal somatosensory evoked potential and motor/sensory nerve conduction studies with F-wave and H-reflex studies, were not within the scope of chiropractic practice as defined in O.C.G.A. § 43-9-1(2) and as set forth in O.C.G.A. § 43-9-16; the patient could not show these medical expenses accrued from a chiropractor's referral and were necessary for the treatment of the pa-

tient's injuries. *Colvard v. Mosley*, 270 Ga. App. 106, 605 S.E.2d 838 (2004).

Massage is not authorized treatment. — Because massage is not an authorized treatment modality under O.C.G.A. Ch. 9, T. 43, a contract for massage services was void and a chiropractor was not authorized to recover payment for rendering such services. *Siegrist v. Iwuagwa*, 229 Ga. App. 508, 494 S.E.2d

180 (1997), cert. denied, 525 U.S. 933, 119 S. Ct. 344, 142 L. Ed. 2d 284 (1998).

Cited in *Georgia Ass'n of Osteopathic Physicians & Surgeons, Inc. v. Allen*, 31 F. Supp. 206 (M.D. Ga. 1940); *Caldwell v. Knight*, 92 Ga. App. 747, 89 S.E.2d 900 (1955); *Capes v. Bretz*, 195 Ga. App. 467, 393 S.E.2d 702 (1990); *College Park Cabs, Inc. v. Justus*, 227 Ga. App. 66, 488 S.E.2d 88 (1997).

OPINIONS OF THE ATTORNEY GENERAL

Chiropractic not within "practice of medicine". — Definition of "chiropractic" is not broad enough to bring chiropractic within definition of "practice of medicine." 1972 Op. Att'y Gen. No. U72-17.

Scope of practice. — Using, recommending, and offering for sale hot and cold packs, and nonprescription over-the-counter structural supports commonly available through retail pharmacies is within the scope of practice of chiropractors. 1995 Op. Att'y Gen. No. 95-8.

Practitioners of chiropractic cannot give injections, withdraw blood, or pierce the skin for any diagnostic or operative procedure, or perform surgical procedures. 1979 Op. Att'y Gen. No. 79-45.

Practice of chiropractic does not permit administration of medications. 1979 Op. Att'y Gen. No. 79-45.

Chiropractor cannot use colonic irrigations, electrical treatments (except X-ray), and vitamins in treatment of patients. 1945-47 Op. Att'y Gen. p. 488 (decided prior to 1986 and 1988 amendments, which added subsections (b) and (i), respectively).

Chiropractor may not sign death certificates. — Portion of former Code 1933, § 84-509 which purported to authorize signing of death certificates by chiropractors has been repealed by implication. 1971 Op. Att'y Gen. No. 71-94; 1971 Op. Att'y Gen. No. U71-60.

Referring patients for magnetic resonance imaging is not within the scope of practice of chiropractors in the State of Georgia. 1993 Op. Att'y Gen. No. 93-11.

RESEARCH REFERENCES

ALR. — Constitutionality of statute prescribing conditions of practicing medicine or surgery as affected by question of discrimination against particular school or method, 54 ALR 600.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

Limitation on right of chiropractors and osteopathic physicians to participate in public medical welfare programs, 8 ALR4th 1056.

Medical malpractice in connection with diagnosis, care, or treatment of diabetes, 43 ALR5th 87.

43-9-17. Scope of practice of chiropractic students.

Nothing in this chapter shall be construed to prohibit the performance of any chiropractic task by a student enrolled in an approved chiropractic college when such student has successfully completed at least one academic year of schooling therein and when such task is performed under the supervision and direction of an authorized instruc-

tor duly licensed to practice chiropractic in this state. (Ga. L. 1976, p. 1054, § 3.)

Law reviews. — For note on the chiropractor as an expert witness, see 15 Mercer L. Rev. 431 (1964).

JUDICIAL DECISIONS

Cited in Georgia Ass'n of Osteopathic Physicians & Surgeons, Inc. v. Allen, 31 F. Supp. 206 (M.D. Ga. 1940); Caldwell v.

Knight, 92 Ga. App. 747, 89 S.E.2d 900 (1955).

OPINIONS OF THE ATTORNEY GENERAL

O.C.G.A. § 43-9-17 is plain and unambiguous; to read into the statutory language an additional limitation that qualified students may only perform chiropractic tasks on the premises of the chiropractic college would violate the principal of statutory construction that an unambiguous statute must be construed according to the statute's terms. 1981 Op. Att'y Gen. No. 81-26.

O.C.G.A. § 43-9-17 does not prohibit qualified students from performing chiropractic tasks under the supervision of an authorized instructor at a location other than the premises of the chiropractic college in which the student is enrolled. 1981 Op. Att'y Gen. No. 81-26.

RESEARCH REFERENCES

ALR. — Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

Limitation on right of chiropractors and osteopathic physicians to participate in public medical welfare programs, 8 ALR4th 1056.

43-9-18. Provision of chiropractic services limited to doctors of chiropractic; construction of chapter.

(a) No person other than a doctor of chiropractic may render chiropractic services or chiropractic adjustments.

(b) Notwithstanding subsection (a) of this Code section, nothing in this chapter shall be construed to:

(1) Prohibit any other licensed health care professional from practicing within the scope of that person's license; or

(2) Permit any person not licensed or authorized under this chapter to engage in the practice of chiropractic. (Ga. L. 1921, p. 166, § 15; Code 1933, § 84-520; Ga. L. 1995, p. 983, § 4; Ga. L. 2011, p. 561, § 1/SB 135.)

The 2011 amendment, effective July 1, 2011, designated the existing provisions

as subsection (b); added subsection (a); and, in subsection (b), in the introductory

language, substituted “Notwithstanding subsection (a) of this Code section, nothing” for “Nothing” at the beginning.

43-9-19. Penalty.

It shall be unlawful for any person to practice chiropractic unless that person shall have first obtained a license as provided in this chapter and possesses all the qualifications prescribed by the terms of this chapter. Any person who practices or attempts to practice chiropractic without a license, or who buys or fraudulently obtains a license to practice chiropractic, or who violates any of the terms of this chapter, or who uses the title “doctor of chiropractic,” “chiropractor,” “chiropractic,” “D.C.,” or any word or title to induce the belief that such a person is engaged in the practice of chiropractic, without first complying with this chapter, shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not less than \$500.00 nor more than \$5,000.00, or by imprisonment for not less than two nor more than five years, or both, at the discretion of the court. All subsequent offenses shall be separate and distinct offenses, and punishable in like manner. (Ga. L. 1921, p. 166, § 15; Code 1933, § 84-9905; Ga. L. 1995, p. 983, § 5; Ga. L. 2007, p. 494, § 1/SB 102.)

Cross references. — False or fraudulent advertising, § 10-1-420 et seq.

RESEARCH REFERENCES

ALR. — Practicing medicine, surgery, dentistry, optometry, podiatry, or other healing arts without license as a separate or continuing offense, 99 ALR2d 654.

43-9-20. Termination.

Repealed by Ga. L. 1992, p. 3137, § 8, effective July 1, 1992.

Editor’s notes. — This Code section was based on Ga. L. 1982, p. 2333, §§ 1, 5 and Ga. L. 1988, p. 530, § 2.

CHAPTER 10

COSMETOLOGISTS

Sec.		Sec.	
43-10-1.	Definitions.	43-10-13.	Right to set course of study for students; application for examination.
43-10-2.	Creation of board; members, meetings, officers, and powers.	43-10-14.	Study by persons 17 years of age and older; registration of apprentices; registration certificate; waiver of education requirements.
43-10-3.	Reimbursement of board members.	43-10-15.	Suspension, revocation, cancellation, or restoration of certificates of registration; reprimand of certificate holders; fines.
43-10-4.	Annual financial report of board [Repealed].	43-10-16.	Injunction against unlicensed or unregistered practice.
43-10-5.	Records of board generally.	43-10-17.	Employment of persons to wash, shampoo, comb, and brush hair in beauty shops or salons.
43-10-6.	Rules and regulations as to sanitary requirements; instruction on HIV and AIDS; inspections; unsanitary condition as nuisance.	43-10-18.	Home beauty shops.
43-10-7.	Issuance of certificates of registration.	43-10-18.1.	Authorization to employ licensed barber; exemption from barbering licensure provisions.
43-10-8.	Certificate of registration required.	43-10-18.2.	Exemption from licensing requirement for nursing home facility.
43-10-9.	Application for certificate of registration; examination; work permit; reciprocity; study at technical college or public school; eligibility of licensed barber.	43-10-18.3.	Serving physically disabled persons in their homes.
43-10-10.	Display of certificate of registration; renewal; reinstatement; continuing education requirements; exemptions.	43-10-19.	Penalty.
43-10-11.	Registration of shops, salons, and schools.	43-10-20.	Teaching of cosmetology in prisons; certification of registration.
43-10-12.	Regulation and permits for schools; teachers and instructors; registration of apprentices; certification as teacher by Department of Education.		

Administrative rules and regulations. — General information: organization, Official Compilation of the Rules and

Regulations of the State of Georgia, Georgia State Board of Cosmetology, Chapter 130-1.

OPINIONS OF THE ATTORNEY GENERAL

Public schools not subject to registration requirements of cosmetology provisions. — State Board of Cosmetology does not have authority to require a

tuition-free technical and vocational school operated as part of the state's public school system under either the State Board of Education or a local board of

education to register and otherwise perform under cosmetology provisions. 1963-65 Op. Att'y Gen. p. 289.

To permit a regulatory board, such as that created by Ga. L. 1963, p. 45, §§ 4 and 8, to administer a course of study in the public school system, to impose a registration fee upon a public school and a license fee upon teachers therein, and to require a registration fee from students taking a course of study in such public schools would be in violation of former Code 1933, § 32-403 (see O.C.G.A. §§ 20-2-11, 20-2-130 et seq. and 20-2-671); therefore, public schools offering courses in cosmetology are not required to pay school registration fee or teachers' license fee, and students in such schools taking cosmetology courses are not required to pay students' registration fee required by the cosmetology provisions. 1963-65 Op. Att'y Gen. p. 250.

Graduates of approved public school program may take licensure examination. — If cosmetology courses

offered in public school systems are taught by qualified teachers, cover courses of instruction and number of hours required by the State Board of Cosmetology and the cosmetology provisions, and meet sanitary and other standards required of private schools or colleges, the graduates of such courses in the public school system are qualified to take the examination for certificate of registration upon payment of the required fee and meeting the other qualifications. 1963-65 Op. Att'y Gen. p. 250.

Public schools not necessarily accredited within meaning of the cosmetology provisions. — Course of instruction in cosmetology taught in a tuition-free technical and vocational school as a part of the state's public school system under either the State Board of Education or a local board of education is not necessarily "an accredited school" within the meaning of the cosmetology provisions. 1963-65 Op. Att'y Gen. p. 250.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 39 Am. Jur. 2d, Health, §§ 1 et seq., 26 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 39A C.J.S., Health and Environment, §§ 3 et seq., 37 et seq., 48 et seq. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees,

§ 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

Validity, construction, and effect of statute or ordinance regulating beauty shops, or beauty culture schools, 56 ALR2d 879.

Coverage and exceptions in beauty shop liability policy, 77 ALR2d 1258.

Applicability of *res ipsa loquitur* doctrine in action for injury to patron of beauty salon, 93 ALR3d 897.

Liability of cosmetology school for injury to patron, 81 ALR4th 444.

43-10-1. Definitions.

As used in this chapter, the term:

(1) "Beautician" means "cosmetologist" as such term is defined in this Code section.

(2) "Beauty shop" or "beauty salon" means any premises where one or more persons engage in the occupation of cosmetology.

(3) "Board" means the State Board of Cosmetology.

(4) "Cosmetologist" means any person who performs any one or more of the following services for compensation:

(A) Cuts or dresses the hair;

(B) Gives facial or scalp massage or facial and scalp treatment with oils or creams and other preparations made for this purpose, either by hand or mechanical appliance;

(C) Singes and shampoos the hair, dyes the hair, or does permanent waving of the hair;

(D) Performs nail care, pedicure, or manicuring services as defined in paragraph (9) of this Code section; or

(E) Performs the services of an esthetician as defined in paragraph (5) of this Code section.

Such person shall be considered as practicing the occupation of a cosmetologist within the meaning of this Code section; provided, however, that such term shall not mean a person who only braids the hair by hairweaving; interlocking; twisting; plaiting; wrapping by hand, chemical, or mechanical devices; or using any natural or synthetic fiber for extensions to the hair, and no such person shall be subject to the provisions of this chapter. Such term shall not apply to a person whose activities are limited to the application of cosmetics which are marketed to individuals and are readily commercially available to consumers.

(5) "Esthetician" or "esthetics operator" means a person who, for compensation, engages in any one or a combination of the following practices, esthetics, or cosmetic skin care:

(A) Massaging the face or neck of a person;

(B) Trimming eyebrows;

(C) Dyeing eyelashes or eyebrows; or

(D) Waxing, stimulating, cleansing, or beautifying the face, neck, arms, or legs of a person by any method with the aid of the hands or any mechanical or electrical apparatus or by the use of a cosmetic preparation.

Such practices of esthetics shall not include the diagnosis, treatment, or therapy of any dermatological condition. Such term shall not apply to a person whose activities are limited to the application of cosmetics

which are marketed to individuals and are readily commercially available to consumers.

(6) Reserved.

(7) "Hair designer" means any person who performs any one or more of the following services for compensation:

(A) Cuts or dresses the hair; or

(B) Singes and shampoos the hair or dyes the hair.

(8) "Master cosmetologist" means a cosmetologist who is possessed of the requisite skill and knowledge to perform properly all the services mentioned in paragraph (4) of this Code section for compensation.

(9) "Nail technician" means a person who, for compensation, trims, files, shapes, decorates, applies sculptured or otherwise artificial nails, or in any way cares for the nails of another person.

(10) "School of cosmetology" means any establishment that receives compensation for training more than one person in the occupation of cosmetology as defined in paragraph (4) of this Code section. Technical colleges whose programs have been approved by the Technical College System of Georgia or the Department of Education are not "schools of cosmetology" within the meaning of this chapter; provided, however, that all such colleges and their programs shall be considered to be "board approved."

(11) "School of esthetics" means any establishment that receives compensation for training more than one person in the occupation of esthetics as defined in paragraph (5) of this Code section. Technical colleges whose programs have been approved by the Technical College System of Georgia or the Department of Education are not "schools of esthetics" within the meaning of this chapter; provided, however, that all such colleges and their programs shall be considered to be "board approved."

(12) Reserved.

(13) "School of hair design" means any establishment that receives compensation for training more than one person in the occupation of hair design as defined in paragraph (7) of this Code section. Technical colleges whose programs have been approved by the Technical College System of Georgia or the Department of Education are not schools of hair design within the meaning of this chapter; provided, however, that all such colleges and their programs shall be considered to be "board approved."

(14) "School of nail care" means any establishment that receives compensation for training more than one person in the occupation of

nail care or manicuring as defined in paragraph (9) of this Code section. Technical colleges whose programs have been approved by the Technical College System of Georgia or the Department of Education are not "schools of nail care" within the meaning of this chapter; provided, however, that all such colleges and their programs shall be considered to be "board approved." (Ga. L. 1963, p. 45, §§ 1, 2; Ga. L. 1966, p. 195, § 1; Ga. L. 1983, p. 1219, § 1; Ga. L. 1985, p. 1057, § 1; Ga. L. 1986, p. 843, § 1; Ga. L. 1996, p. 1239, § 4; Ga. L. 2000, p. 814, § 1; Ga. L. 2001, p. 1077, § 1; Ga. L. 2006, p. 904, § 1/SB 145; Ga. L. 2008, p. 335, § 7/SB 435.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, a comma was inserted in subparagraph (4)(D).

JUDICIAL DECISIONS

No gender restrictions. — Operations of both barbershops and beauty salons involve cutting, dressing, singeing, shampooing, dyeing, or permanently waving the hair of a client. The statutes do not

restrict the use of barbershops or beauty salons to one specific gender. *Acord v. Maynard*, 198 Ga. App. 296, 401 S.E.2d 315 (1991).

OPINIONS OF THE ATTORNEY GENERAL

Cosmetologists may work with wigs. — By deleting the word "human" from the definition of cosmetologist, the legislature intended to clear up ambiguity and thus confer joint jurisdiction over wigs as well as human hair upon both barbers and cosmetologists. 1965-66 Op. Att'y Gen. No. 66-180.

Jurisdiction conferred upon cosmetologists to work on hair of deceased persons is shared with funeral directors. — Effect of the 1966 amendment to the Barbers' and Cosmetologists' Acts was to confer as between barbers and cosmetologists extra jurisdiction upon cosmetologists in regard to services performed upon hair of deceased persons; the extra jurisdiction conferred upon cosmetologists, however, is not absolute, but must be considered as being shared with that of funeral directors. 1965-66 Op. Att'y Gen. No. 66-180.

Cosmetologists may not shave or trim beards. — Person who is licensed as a cosmetologist may cut and dress hair, give facials or scalp massages, singe and shampoo hair, or dye the hair of a male; these are all services which may also be

performed by a barber; a cosmetologist who is performing cosmetology services upon a male would not be licensed to shave or trim the beard of a male patron. 1971 Op. Att'y Gen. No. 71-54.

Transcutaneous electrical nerve stimulation used as a form of facial or a scalp treatment by a cosmetologist is not authorized by O.C.G.A. Ch. 10, T. 43. 1982 Op. Att'y Gen. No. 82-102 (decided prior to 1983 amendment).

Tuition-free technical and vocational public school not within definition contained in Ga. L. 1963, p. 45, §§ 1 and 2. — Tuition-free technical and vocational school operated as a part of the state's public school system under either the State Board of Education or a local board of education that offers a course in cosmetology is not a "beauty school, beauty college, or school of cosmetology" within the definition of this statute. 1963-65 Op. Att'y Gen. p. 259; 1963-65 Op. Att'y Gen. p. 289 (see O.C.G.A. § 43-10-1).

Requirements for private beauty colleges not applicable to public schools. — Cosmetology provisions apply to beauty schools, beauty colleges, and

schools of cosmetology as defined in this statute; the provisions do not apply to technical and vocational schools operated as a part of the public school system. 1963-65 Op. Att'y Gen. p. 289 (see O.C.G.A. § 43-10-1).

Requirements do not apply even if public school charges public for services. — Practical training is a necessary element in a course in cosmetology; the fact that students practice on members of the public and that a fee is charged for students' service does not bring a tuition-free technical or vocational school which is a part of the public school system under provisions of this statute. 1963-65

Op. Att'y Gen. p. 289 (see O.C.G.A. § 43-10-1).

Requirements do not apply if students must pay fee to public school. — If a tuition-free technical and vocational school operated as part of the state's public school system under either the State Board of Education or a local board of education requires a student to pay an incidental fee before such student is admitted to study a course in cosmetology, such charges does not bring the school under provisions of this statute. 1963-65 Op. Att'y Gen. p. 289 (see O.C.G.A. § 43-10-1).

RESEARCH REFERENCES

Am. Jur. 2d. — 11 Am. Jur. 2d, Barbers and Cosmetologists, § 4 et seq.

C.J.S. — 39A C.J.S., Health and Environment, § 37 et seq.

ALR. — Places and persons within purview of statute or ordinance regulating barbers, 31 ALR 433; 59 ALR 543.

Applicability of *res ipsa loquitur* doctrine in action for injury to patron of beauty salon, 93 ALR3d 897.

Malpractice in treatment of skin disease, disorder, blemish, or scar, 19 ALR5th 563.

43-10-2. Creation of board; members, meetings, officers, and powers.

(a) There is created the State Board of Cosmetology. The board shall consist of nine members who shall be residents of this state. The board shall have the duty of carrying out and enforcing this chapter.

(b) Members of the board shall be at least 25 years of age and have obtained a high school diploma, a general educational development (GED) diploma, or a postsecondary education or college degree; and five of such members must have had at least five years of practical experience in the practice of cosmetology at the master level, a portion of which must have been as a beauty salon owner or manager. One member of the board must have had at least five years of practical experience in the practice of cosmetology at the esthetician level. One member of the board must have had at least five years of practical experience as a manicurist.

(c) The board shall meet as necessary each year for the purpose of adopting rules and regulations and handling other matters pertaining to duties of the board. Board members may attend and observe all written and practical examinations held for certificates of registration pursuant to this chapter.

(d) No member of the board shall be affiliated with any school of cosmetology. Two members shall not have any connection with the

practice or business of cosmetology whatsoever but shall have a recognized interest in consumer affairs and in consumer protection concerns. No member of the board shall be affiliated or connected in any manner with any manufacturer or wholesale or jobbing house dealing with supplies sold to practitioners of cosmetology while in office.

(e) Board members shall be appointed by the Governor for a term of three years and until their successors are appointed and qualified. Vacancies shall be filled by the Governor for the unexpired portion of the term. The board may do all things necessary for carrying this chapter into effect and may, from time to time, promulgate necessary rules and regulations compatible with this chapter. The Governor may remove any board member for cause as provided in Code Section 43-1-17.

(f) Each year the members shall elect a chairman from among themselves. In the event the members cannot agree as to who shall be chairman, the Governor shall appoint one of such members as chairman. The chairman so elected or appointed shall be eligible to succeed himself or herself. The members of the board shall be considered public officers and shall take the oath required thereof.

(g) The board shall adopt a seal to be used to authenticate all its official papers and acts and shall have power to subpoena witnesses, administer oaths, and hear and take testimony in any matter over which it may have jurisdiction. (Ga. L. 1963, p. 45, §§ 4, 8; Ga. L. 1966, p. 195, § 2; Ga. L. 1979, p. 1327, § 2; Ga. L. 1980, p. 1420, § 1; Ga. L. 1983, p. 1219, § 2; Ga. L. 1985, p. 1057, § 2; Ga. L. 1986, p. 843, § 2; Ga. L. 2000, p. 814, § 1; Ga. L. 2001, Ex. Sess., p. 321, § 1; Ga. L. 2002, p. 415, § 43; Ga. L. 2004, p. 617, § 2; Ga. L. 2006, p. 904, § 2/SB 145; Ga. L. 2006, p. 917, § 1/HB 1170.)

Administrative rules and regulations. — Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia State Board of Cosmetology, Chapter 130-1 et seq.

43-10-3. Reimbursement of board members.

Each member of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2. (Ga. L. 1963, p. 45, § 6; Ga. L. 1966, p. 195, § 3; Ga. L. 1979, p. 1327, § 4; Ga. L. 1980, p. 1420, § 4; Ga. L. 2000, p. 814, § 1.)

43-10-4. Annual financial report of board.

Reserved. Repealed by Ga. L. 1985, p. 1057, § 3, effective July 1, 1985.

Editor's notes. — This Code section was based on Ga. L. 1963, p. 45, § 7, and Ga. L. 1980, p. 1420, § 5.

43-10-5. Records of board generally.

The division director shall keep a record of all proceedings of the board. Such records shall be prima-facie evidence of all matters required to be kept therein, and certified copies of the same or parts thereof shall be primary evidence of their contents. All such copies, other documents, or certificates lawfully issued upon the authority of the board shall, when authenticated under the seal of the board, be admitted in any investigation in any court or elsewhere without further proof. (Ga. L. 1963, p. 45, § 14; Ga. L. 2000, p. 814, § 1; Ga. L. 2000, p. 1706, § 19.)

RESEARCH REFERENCES

Am. Jur. 2d. — 29A Am. Jur. 2d, Evidence, §§ 1062, 1066, 1095, 1096. 66 Am. Jur. 2d, Records and Recording Laws, §§ 1, 2. **C.J.S.** — 32A C.J.S., Evidence, § 1144. 76 C.J.S., Records, § 1 et seq.

43-10-6. Rules and regulations as to sanitary requirements; instruction on HIV and AIDS; inspections; unsanitary condition as nuisance.

(a) The board is authorized to adopt reasonable rules and regulations prescribing the sanitary requirements of beauty shops, beauty salons, schools of cosmetology, schools of esthetics, schools of hair design, and schools of nail care, subject to the approval of the Department of Public Health, and to cause the rules and regulations or any subsequent revisions to be in suitable form. The board shall make the rules and regulations available to the proprietor of each beauty shop, beauty salon, school of cosmetology, school of esthetics, school of hair design, or school of nail care. It shall be the duty of every proprietor or person operating a beauty shop, salon, school of cosmetology, school of esthetics, school of hair design, and school of nail care in this state to keep a copy of such rules and regulations posted in a conspicuous place in his or her business, so as to be easily read by his or her customers.

(b) The board is authorized to adopt reasonable rules and regulations requiring that persons licensed under this chapter undergo instruction on Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome.

(c) Any inspector employed by the Secretary of State shall have the power to enter and make reasonable examination of any beauty shop, salon, or school in the state during business hours for the purpose of

enforcing the rules and regulations of the board and for the purpose of ascertaining the sanitary conditions thereof.

(d) Any beauty shop, salon, or school in which tools, appliances, and furnishings used therein are kept in an unclean and unsanitary condition so as to endanger health is declared to be a public nuisance. (Ga. L. 1963, p. 45, § 5; Ga. L. 1967, p. 727, § 1; Ga. L. 1979, p. 1327, § 3; Ga. L. 1980, p. 1420, §§ 2, 3; Ga. L. 1985, p. 1057, § 4; Ga. L. 2000, p. 814, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2006, p. 904, § 3/SB 145; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2010, p. 266, § 19/SB 195; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Community Health" for "Department of Human Resources" in the first sentence of subsection (a).

The 2010 amendment, effective May 20, 2010, in subsection (a), inserted "and" and substituted ". The board shall make the rules and regulations available" for ", and to transmit a copy thereof"; and, in subsection (c), substituted "Secretary of State" for "division director" and substituted "or school" for "and school".

The 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" in the first sentence of subsection (a).

Administrative rules and regulations. — Sanitation and health, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Cosmetology, Chapter 130-5.

OPINIONS OF THE ATTORNEY GENERAL

Inspectors do not have right to inspect tuition-free technical and vocational school operated as part of the state's public school system under either the State Board of Education or a local board of education for purpose of reporting to the board any violation of such rules and regulations concerning sanitary conditions. 1963-65 Op. Att'y Gen. p. 289.

Board may not set minimum standards of sanitation and courses of study in technical and vocational schools. — Board, not having jurisdiction

over the public school system of the State of Georgia, is without authority to set minimum standards of sanitation and courses of study in tuition-free technical and vocational schools operated as part of the public school system under either the State Board of Education or a local board of education. 1963-65 Op. Att'y Gen. p. 289.

Board may require that applicant for master cosmetology examination complete prescribed course of study. 1971 Op. Att'y Gen. No. 71-14.

43-10-7. Issuance of certificates of registration.

It shall be the duty of the board to issue through the division director those certificates of registration for which provision is made in this chapter. (Ga. L. 1963, p. 45, § 8; Ga. L. 2000, p. 814, § 1; Ga. L. 2000, p. 1706, § 19.)

43-10-8. Certificate of registration required.

(a) It shall be unlawful for any person to pursue the occupation of cosmetology in this state unless he or she has first completed the required hours for and obtained the appropriate certificate of registration as provided in this chapter.

(b) It shall be unlawful for any person to hold himself or herself out as a master cosmetologist or hair designer without having first obtained the certificate of registration for such. Such person shall be authorized to perform all the services mentioned in paragraph (4) of Code Section 43-10-1. Nothing in this chapter shall prohibit any person who holds a valid master cosmetologist license in this state on March 29, 1983, from practicing at the master cosmetologist level as defined in paragraph (8) of Code Section 43-10-1.

(c) Reserved.

(d) Notwithstanding any other provisions of this chapter, any person desiring to perform solely hair design services shall be allowed to obtain a certificate of registration at the hair design level upon completing the required hours therefor, which certifies that the holder thereof shall be authorized to perform some or all of the services mentioned in paragraph (7) of Code Section 43-10-1.

(e) Notwithstanding any other provisions of this chapter, any person desiring to perform solely cosmetic skin care services shall be allowed to obtain a certificate of registration at the esthetician level upon completing the required hours therefor, which certifies that the holder thereof shall be authorized to perform some or all of the services mentioned in paragraph (5) of Code Section 43-10-1.

(f)(1) Notwithstanding any other provisions of this chapter, any person desiring to perform solely cosmetic nail care services shall be allowed to obtain a certificate of registration at the nail technician level upon completing the required hours therefor, which certifies that the holder thereof shall be authorized to perform some or all of the services mentioned in paragraph (9) of Code Section 43-10-1.

(2) Notwithstanding any other provisions of this chapter, any person who has actively engaged in the practice of cosmetology, hair design, esthetics, or nail care on a military installation in Georgia for three years prior to July 1, 1985, shall be eligible to receive a certificate of registration at the cosmetology, hair design, esthetics, or nail care level upon proper proof of experience, application, and appropriate fee being submitted to the board on or before September 1, 1985.

(g) It shall also be unlawful for any person or persons to operate a beauty shop, beauty salon, hair design salon, school of cosmetology,

school of hair design, school of esthetics, or school of nail care without first having obtained a certificate of registration for such shop, salon, or school as provided in this chapter. Any beauty shop, salon, or school shall register with the division director of the professional licensing boards prior to opening.

(h) This chapter shall have uniform application throughout the state so that no cosmetologist, hair designer, beauty shop, school of cosmetology, school of hair design, school of esthetics, or school of nail care shall be exempt from regulation. (Ga. L. 1963, p. 45, § 3; Ga. L. 1979, p. 1327, § 1; Ga. L. 1983, p. 1219, § 3; Ga. L. 1985, p. 1057, §§ 5, 6; Ga. L. 1986, p. 10, § 43; Ga. L. 2000, p. 814, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2006, p. 904, § 4/SB 145; Ga. L. 2011, p. 752, § 43/HB 142.)

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted “as defined in paragraph (8)” for “as defined in paragraph (4)” in the last sentence of subsection (b); and substituted “paragraph (9)” for “paragraph (6)” near the end of paragraph (f)(1).

Administrative rules and regulations. — License requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Cosmetology, Chapter 130-2.

OPINIONS OF THE ATTORNEY GENERAL

Board may not require public school to register. — State Board of Cosmetology does not have the authority to require a tuition-free technical and vocational school operated as part of the state’s public school system under either the State Board of Education or a local board of education to register and otherwise perform under the cosmetology provisions. 1963-65 Op. Att’y Gen. p. 289.

Penalty for owning and operating unregistered beauty shop. — If a

holder of a certificate of registration to practice cosmetology violates Ga. L. 1979, p. 1327, §§ 1 and 11 (see O.C.G.A. §§ 43-10-8 and 43-10-11) by owning and operating an unregistered beauty shop, the holder’s certificate of registration to practice cosmetology is subject to being reprimanded, suspended, revoked, or canceled by the State Board of Cosmetology pursuant to Ga. L. 1979, p. 1327, § 10 (see O.C.G.A. § 43-10-15). 1980 Op. Att’y Gen. No. 80-23.

RESEARCH REFERENCES

ALR. — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

Applicability of *res ipsa loquitur* doctrine in action for injury to patron of beauty salon, 93 ALR3d 897.

43-10-9. Application for certificate of registration; examination; work permit; reciprocity; study at technical college or public school; eligibility of licensed barber.

(a) Any person desiring to obtain a certificate of registration to enable him or her to engage in the occupation of cosmetology shall make application through the division director to the board and shall present proof that he or she has obtained a high school diploma, a general educational development (GED) diploma, or a postsecondary education or college degree. If, after review of the application, it is determined that the applicant is at least 17 years of age; has met the minimum educational requirements; is of good moral character; has completed a 1,500 credit hour study course with at least nine months at a board approved school or has served as an apprentice in a beauty shop or beauty salon for a period of at least 3,000 credit hours; has practiced or studied the occupation of cosmetology; is possessed of the requisite skill in such occupation to perform properly all the duties of the occupation, including his or her ability in the preparation of tools, in performing the services mentioned in paragraph (4) of Code Section 43-10-1, and in all the duties and services incident thereto; and has passed both a written and a practical examination approved by the board, a certificate of registration shall be issued to him or her entitling him or her to practice the occupation of master cosmetologist. Notwithstanding any other provisions of this subsection, the board shall be authorized to waive any education requirements under this subsection in cases of hardship, disability, or illness or under such other circumstances as the board deems appropriate with respect to any applicant who was enrolled in a board approved school or had completed a board approved study course as of June 30, 2000.

(b) Should an applicant under this Code section fail to pass the written or the practical examination, the board shall furnish the applicant a statement in writing, stating wherein the applicant was deficient. Nothing in this chapter shall be construed to prevent applicants from making subsequent applications to qualify under this Code section, provided they again pay the required examination fee.

(c) An approved applicant for examination under this Code section may be issued a work permit authorizing said applicant to practice such occupation until the release of the results of the written and the practical examination for which the applicant is scheduled. If the applicant fails to appear for the examination or fails any portion of the examination, the work permit shall be revoked unless the applicant provides just cause to the board as to why the applicant was unable to appear for the examination.

(d) Should an applicant have a current cosmetology license in force from another state or country, or territory of the United States, or the

District of Columbia, where similar reciprocity is extended to this state and licensure requirements are substantially equal to those in this state, and pays a fee and submits an application, the applicant may be issued, without examination, a certificate of registration at the appropriate level, entitling the applicant to practice the occupation of cosmetology or the teaching of cosmetology at that level, unless the board, in its discretion, sees fit to require a written or a practical examination subject to the terms and provisions of this chapter. Notwithstanding any other provisions of this subsection, the board shall be authorized to waive any education or experience requirements applicable to any person who holds a current license or certificate to practice cosmetology outside of this state and who desires to obtain a license or certificate at a level authorized under this Code section to practice at such level in this state in cases of hardship, disability, or illness or under such other circumstances as the board deems appropriate.

(e) Reserved.

(f)(1) Any person desiring to obtain a certificate of registration to enable him or her to engage in the occupation of hair design shall make application through the division director and shall present proof that he or she has obtained a high school diploma, a general educational development (GED) diploma, or a postsecondary education or college degree. If, after review of the application, it is determined that the applicant is at least 17 years of age; has met the minimum educational requirements; is of good moral character; has completed a 1,325 credit hour study course with at least seven months at a board approved school or has served as an apprentice in a beauty shop, beauty salon, or hair design salon for a period of at least 2,650 credit hours; has practiced or studied the occupation of hair design; is possessed of the requisite skill in such occupation to perform properly all the duties of the occupation, including his or her ability in the preparation of tools, in performing the services mentioned in paragraph (7) of Code Section 43-10-1, and in all the duties and services incident thereto; and has passed both a written and a practical examination approved by the board, a certificate of registration shall be issued to him or her entitling him or her to practice the occupation of hair design. Notwithstanding any other provisions of this subsection, the board shall be authorized to waive any education requirements under this subsection in cases of hardship, disability, or illness or under such other circumstances as the board deems appropriate with respect to any applicant who was enrolled in a board approved school or had completed a board approved study course as of June 30, 2006.

(2) Should an applicant under this subsection fail to pass the written or the practical examination, the board shall furnish the

applicant a statement in writing, stating in what manner the applicant was deficient. Nothing in this chapter shall be construed to prevent applicants from making subsequent applications to qualify under this subsection, provided they again pay the required examination fee.

(3) An approved applicant for examination under this subsection may be issued a work permit authorizing said applicant to practice such occupation until the release of the results of the written and the practical examination for which the applicant is scheduled. If the applicant fails to appear for the examination or fails any portion of the examination, the work permit shall be revoked unless the applicant provides just cause to the board as to why the applicant was unable to appear for the examination.

(4) Should an applicant have a current hair design license in force from another state, country, territory of the United States, or the District of Columbia, where similar reciprocity is extended to this state and licensure requirements are substantially equal to those in this state, and have paid a fee and have submitted an application, the applicant may be issued, without examination, a certificate of registration at the appropriate level entitling him or her to practice the occupation of hair design or the teaching of hair design at that level, unless the board, in its discretion, sees fit to require a written or a practical examination subject to the terms and provisions of this chapter. Notwithstanding any other provisions of this subsection, the board shall be authorized to waive any education or experience requirements applicable to any person who holds a current license or certificate to practice hair design outside of this state and who desires to obtain a license or certificate at a level authorized under this subsection to practice at such level in this state in cases of hardship, disability, or illness or under such other circumstances as the board deems appropriate.

(g)(1) Any person desiring to obtain a certificate of registration at the esthetician level under the terms of this chapter shall make application through the division director to the board and shall present proof that he or she has obtained a high school diploma, a general educational development (GED) diploma, or a postsecondary education or college degree. If, after review of the application, it is determined that the applicant is at least 17 years of age; has met the minimum educational requirements; is of good moral character; has completed a 1,000 credit hour study course of at least nine months at a board approved school or has served as an apprentice in a beauty shop or beauty salon for a period of at least 2,000 credit hours; has practiced or studied cosmetic skin care as defined in paragraph (5) of Code Section 43-10-1; is possessed of the requisite skill to perform

properly these services; and has passed a written and a practical examination approved by the board, a certificate of registration shall be issued to the applicant entitling the applicant to practice the occupation of cosmetology at the esthetician level. Notwithstanding any other provisions of this subsection, the board shall be authorized to waive any education requirements under this subsection in cases of hardship, disability, or illness or under such other circumstances as the board deems appropriate with respect to any applicant who was enrolled in a board approved school or had completed a board approved study course as of June 30, 2000.

(2) Should an applicant have a current esthetician license in force from another state, country, territory of the United States, or the District of Columbia, where similar reciprocity is extended to this state and licensure requirements are substantially equal to those in this state, and have paid a fee and have submitted an application, the applicant may be issued, without examination, a certificate of registration at the appropriate level entitling him or her to practice the occupation of esthetician or the teaching of esthetics at that level, unless the board, in its discretion, sees fit to require a written or a practical examination subject to the terms and provisions of this chapter. Notwithstanding any other provisions of this subsection, the board shall be authorized to waive any education or experience requirements applicable to any person who holds a current license or certificate to practice esthetics outside of this state and who desires to obtain a license or certificate at a level authorized under this subsection to practice at such level in this state in cases of hardship, disability, or illness or under such other circumstances as the board deems appropriate.

(h)(1) Any person desiring to obtain a certificate of registration at the nail technician level under the terms of this chapter shall make application through the division director to the board and shall present proof that he or she has obtained a high school diploma, a general educational development (GED) diploma, or a postsecondary education or college degree. If, after review of the application, it is determined that the applicant is at least 17 years of age; has met the minimum educational requirements; is of good moral character; has completed a 525 credit hour study course of at least four months at a board approved school or has served as an apprentice in a beauty shop or beauty salon for a period of at least 1,050 credit hours; has practiced or studied nail care; is possessed of the requisite skill to perform properly these services; and has passed both a written and a practical examination approved by the board, a certificate of registration shall be issued to the applicant entitling the applicant to practice the occupation of cosmetology at the nail technician level. Notwithstanding any other provisions of this subsection, the board

shall be authorized to waive any education requirements under this subsection in cases of hardship, disability, or illness or under such other circumstances as the board deems appropriate with respect to any applicant who was enrolled in a board approved school or had completed a board approved study course as of June 30, 2000.

(2) Should an applicant have a current nail technician license in force from another state, country, territory of the United States, or the District of Columbia, where similar reciprocity is extended to this state and licensure requirements are substantially equal to those in this state, and have paid a fee and have submitted an application, the applicant may be issued, without examination, a certificate of registration at the appropriate level entitling him or her to practice the occupation of nail technician or the teaching of nail care at that level, unless the board, in its discretion, sees fit to require a written or a practical examination subject to the terms and provisions of this chapter. Notwithstanding any other provisions of this subsection, the board shall be authorized to waive any education or experience requirements applicable to any person who holds a current license or certificate to practice nail care outside of this state and who desires to obtain a license or certificate at a level authorized under this subsection to practice at such level in this state in cases of hardship, disability, or illness or under such other circumstances as the board deems appropriate.

(i) Nothing in this Code section shall be construed as preventing a person from obtaining a certificate of registration for the occupation of cosmetology at the master level, the hair design level, the esthetician level, or the nail technician level if such person obtains his or her credit hour study at a State Board of Education approved school or a technical college under the jurisdiction of the Technical College System of Georgia or the Department of Education rather than at a board approved school.

(j) A person licensed to practice barbering under Chapter 7 of this title shall be eligible to take the master cosmetologist examination provided for in this Code section if that person completes a board approved 250 hour prescribed course in an approved cosmetology school, submits a completed application, and pays the proper fees established by the board.

(k) Board members may attend and observe all written and practical examinations held for certificates of registration pursuant to this Code section. (Ga. L. 1963, p. 45, § 10; Ga. L. 1966, p. 195, § 5; Ga. L. 1977, p. 803, § 1; Ga. L. 1979, p. 1327, § 5; Ga. L. 1980, p. 1420, § 7; Ga. L. 1983, p. 1219, § 4; Ga. L. 1984, p. 22, § 43; Ga. L. 1985, p. 1057, § 7; Ga. L. 1986, p. 10, § 43; Ga. L. 1986, p. 843, §§ 3, 4; Ga. L. 1996, p. 1239, § 5; Ga. L. 2000, p. 814, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L.

2001, p. 4, § 43; Ga. L. 2001, p. 1077, § 2; Ga. L. 2001, p. 1185, § 1; Ga. L. 2002, p. 415, § 43; Ga. L. 2006, p. 904, § 5/SB 145; Ga. L. 2006, p. 917, § 2/HB 1170; Ga. L. 2008, p. 335, § 7/SB 435.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, “she” was substituted for “her” in the first sentence of subsection (f).

The amendment to subsection (d) by Ga. L. 2006, p. 904, § 5, irreconcilably conflicted with and was treated as superseded by Ga. L. 2006, p. 917, § 2. See *County of Butts v. Strahan*, 151 Ga. 417, 107 S.E. 163 (1921).

Administrative rules and regulations. — Examinations, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Cosmetology, Chapter 130-6.

Reciprocity, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Cosmetology, Chapter 130-8.

OPINIONS OF THE ATTORNEY GENERAL

Graduates of approved public schools may take exam. — If cosmetology courses offered in public school systems are taught by qualified teachers, cover courses of instruction and number of hours required by the State Board of Cosmetology and the statutory cosmetology provisions, and meet sanitary and other standards required of private schools or colleges, graduates of such courses in the public school system are qualified to take the examination for certificate of registration upon payment of the required fee and meeting the other qualifications. 1963-65 Op. Att’y Gen. p. 250.

Public schools not necessarily accredited. — Course of instruction in cosmetology taught in a tuition-free technical and vocational school as part of the state’s

public school system under either the State Board of Education or a local board of education is not necessarily “an accredited school” within the meaning of the cosmetology provisions. 1963-65 Op. Att’y Gen. p. 250 (decided prior to 1983 amendment).

Board may refuse examination to graduates of unaccredited schools. — Board has the right and power to refuse to give an examination or license to a person unless that person has completed a 1,500 hour study course at an accredited school, as defined by the cosmetology provisions, or has served as an apprentice in a beauty salon for a period of at least 3,000 hours. 1963-65 Op. Att’y Gen. p. 289 (decided prior to 1983 amendment; see O.C.G.A. § 43-10-9).

43-10-10. Display of certificate of registration; renewal; reinstatement; continuing education requirements; exemptions.

(a) The holder of any certificate of registration issued under Code Section 43-10-9 shall display the same in a conspicuous place in his or her shop or place of business. Certificates of registration issued under Code Section 43-10-9 shall be renewable biennially. The holder shall pay to the division director a renewal fee in such amount as shall be set by the board by regulation. Upon failure to renew such certificate of registration, it shall stand automatically revoked. The holder shall be disqualified from practicing the occupation of cosmetology under this chapter until all fees to date of application for reinstatement shall be paid, an application for reinstatement shall be submitted along with a reinstatement fee in such amount as shall be set by the board by

regulation, and documentation shall be submitted of completion of all required continuing education hours since the date the registration was automatically revoked. If the board is satisfied that the applicant for reinstatement meets all the qualifications set forth in this Code section and Code Section 43-10-9, the applicant shall be issued a new certificate of registration.

(b) Notwithstanding subsection (a) of this Code section, at the time of renewal of any certificate of registration issued under Code Section 43-10-9, the holder of such certificate shall provide proof, in a form approved by the board, of completion of five hours of continuing education in compliance with this Code section since the date of issuance of the latest renewal certificate. A holder who is renewing a certificate for the first time shall not be required to meet the continuing education requirement until the time of the second renewal. Further, the requirement for continuing education for the holder of any certificate of registration issued under this chapter shall become effective on January 1, 2003, provided that the board has adopted rules and regulations implementing this Code section pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(c) Three hours of continuing education shall be satisfied by a health and safety course using a curriculum developed by the Technical College System of Georgia. Such curriculum may be revised by the Technical College System of Georgia as necessary to incorporate new developments. The Technical College System of Georgia shall make the curriculum available to other providers of continuing education.

(d) The remaining two hours of continuing education may be satisfied by:

(1) Attendance at an industry or trade show registered with the board; or

(2) A course or courses of study registered with the board in one or more of the following subjects: health and safety, industry trends, computer skills, business management, or the holder's area of practice.

(e) To request registration of an industry or trade show for continuing education credit, a person or entity shall submit to the board the date and location of the industry or trade show. To request registration of a course of study for continuing education credit, the person or entity offering the course of study shall submit to the board an outline of the subject matter, a list of the persons teaching the course with a summary of their qualifications, the number of hours for each course, and the date and location where the course of study will be presented or has been presented, if applicable. Any certificate holder may request board approval of an unregistered industry or trade show or an unregistered

course of study. A person or entity conducting an industry or trade show or a course of study shall provide written proof of attendance at the industry or trade show or completion of a course of study to all participants.

(f) The board shall register and allow credit as continuing education for courses conducted via the Internet or other electronic means or home study courses.

(g) Courses in cosmetology, hair design, nail technology, esthetics, computers, business, or health and safety issues offered by schools under the jurisdiction of the Board of Regents of the University System of Georgia, the Technical College System of Georgia, the Department of Education, or any accredited postsecondary institution shall satisfy the continuing education requirement without a request to the board for approval or registration.

(h) In no event shall the testing of knowledge or skills be required as proof of the successful completion of a continuing education course.

(i) For the first renewal period during which the continuing education requirement will be enforced, the board shall allow credit for continuing education hours which were board approved or which did not require prior approval by the board received between March 31, 2000, and January 1, 2002, for master cosmetologists and between August 31, 1999, and January 1, 2002, for nail technicians and estheticians. Thereafter, no excess hours from one renewal period shall be authorized to be credited toward the continuing education requirement for another renewal period.

(j) The continuing education requirement shall not apply to certificate holders who:

(1) Have held a certificate for 25 or more years; or

(2) Demonstrate a hardship based on a disability, age, illness, or such other circumstance as the board may identify by rule and determine on a case-by-case basis.

Certificate holders who claim an exemption from the continuing education requirement on the basis of paragraph (2) of this subsection shall provide a sworn statement setting out the facts supporting such exemption. (Ga. L. 1963, p. 45, § 13; Ga. L. 1979, p. 1327, § 9; Ga. L. 1985, p. 1057, § 8; Ga. L. 2000, p. 814, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2001, Ex. Sess., p. 321, § 2; Ga. L. 2006, p. 904, § 6/SB 145; Ga. L. 2008, p. 335, § 7/SB 435.)

43-10-11. Registration of shops, salons, and schools.

All beauty shops, salons, schools of cosmetology, schools of hair design, schools of esthetics, and schools of nail care shall be registered

with the division director by the owner or manager. Such registration shall be made by the filing of an application on forms furnished by the division director; shall include the name and location of the beauty shop, salon, or school, the name and address of the owner, and the names and addresses of all instructors of the shop, salon, or school at the time of registration; and shall be accompanied by a registration fee in such amount as shall be set by the board by regulation. The board is authorized and directed to issue a certificate of registration to each shop, salon, or school so registering and paying such fee, which certificate shall be displayed in a conspicuous place in the registered shop, salon, or school. (Ga. L. 1963, p. 45, § 15; Ga. L. 1979, p. 1327, § 11; Ga. L. 1985, p. 1057, § 9; Ga. L. 2000, p. 814, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2006, p. 904, § 7/SB 145.)

Administrative rules and regulations. — School equipment — curriculum, Official Compilation of the Rules and Reg-

ulations of the State of Georgia, Georgia State Board of Cosmetology, Chapter 130-3.

OPINIONS OF THE ATTORNEY GENERAL

Board may not require public school to register and pay fees. — Board is without authority to require a tuition-free technical or vocational school which is operated as part of the public school system to obtain a certificate of registration and pay fees prescribed in this statute. 1963-65 Op. Att’y Gen. p. 289 (see O.C.G.A. § 43-10-11).

Penalty for owning and operating unregistered beauty shop. — If a holder of a certificate of registration to

practice cosmetology violates Ga. L. 1979, p. 1327, §§ 1 and 11 (see O.C.G.A. §§ 43-10-8 and 43-10-11) by owning and operating an unregistered beauty shop, the holder’s certificate of registration to practice cosmetology is subject to being reprimanded, suspended, revoked, or canceled by the State Board of Cosmetology pursuant to Ga. L. 1979, p. 1327, § 10 (see O.C.G.A. § 43-10-15). 1980 Op. Att’y Gen. No. 80-23.

43-10-12. Regulation and permits for schools; teachers and instructors; registration of apprentices; certification as teacher by Department of Education.

(a)(1) All schools of cosmetology, schools of esthetics, or schools of nail care shall:

(A) Cause to be registered with the board, at the time of opening, 15 bona fide students;

(B) Have not less than one instructor for every 20 students or a fraction thereof; and

(C) Keep permanently displayed a sign reading “School of Cosmetology,” “School of Esthetics,” or “School of Nail Care,” as the case may be; and all such signs shall also display the words “Service by Students Only.” Where service is rendered by a student, no commissions or premiums shall be paid to such student for work done

in the schools; nor shall any person be employed by the schools to render professional service to the public.

(2) All schools of cosmetology, schools of esthetics, and schools of nail care are required to keep in a conspicuous place in such schools a copy of the rules and regulations adopted by the board.

(3) All cosmetologists who take an apprentice pursuant to Code Section 43-10-14 shall file immediately with the board through the division director the name and age of such apprentice; and the board shall cause such information to be entered on a register kept by the division director for that purpose.

(b) Any person desiring to operate or conduct a school of cosmetology, school of esthetics, or school of nail care prior to opening shall first secure from the board a permit to do so and shall keep the permit prominently displayed in the school.

(c) The board shall have the right to pass upon the qualifications, appointments, courses of study, and hours of study in the school of cosmetology, school of esthetics, or school of nail care, provided that:

(1) All schools of cosmetology shall be required to teach the following courses: theory, permanent and cold waving, hair coloring and bleaching, hair and scalp treatments, hair and scalp conditioning, hair cutting and shaping, hairdressing, shampooing, styling, comb out, charm, reception, desk work, art and laboratory, facials, makeup and arching, skin care, nail care, state law, state rules and regulations, and any other subjects related to cosmetology and sanitation;

(2) All schools of esthetics shall be required to teach the following courses: theory, skin care, facials, makeup and arching, charm, reception, desk work, art and laboratory, massaging the face or neck, trimming eyebrows, dyeing, waxing, stimulating, cleansing, or beautifying, state law, state rules and regulations, and any other subjects related to esthetics and sanitation; and

(3) All schools of nail care shall be required to teach the following courses: theory, trimming, filing, shaping, decorating, sculpturing and artificial nails, nail care, charm, reception, desk work, art and laboratory, state law, state rules and regulations, and any other subjects related to nail care and sanitation.

(d)(1) The board shall have the right to suspend or revoke the certificate, permit, or license of or to reprimand any such school of cosmetology, school of esthetics, or school of nail care, or instructor or teacher therein, for the violation of this chapter.

(2) The board shall have the same power and authority as to sanitary conditions over schools as it has over beauty shops and beauty salons.

(e)(1) All teachers or instructors shall devote their entire time to instruction of students. Any person desiring to teach or instruct in any school of cosmetology, school of esthetics, or school of nail care shall first file his or her application with the division director for a license, shall pay a fee in such amount as shall be set by the board by regulation, and shall successfully pass both a written and a practical examination to become an instructor.

(2)(A) A person desiring to teach at the master level shall satisfy the board that he or she:

(i) Holds a current cosmetology license at the master level and is a high school graduate, has a general educational development (GED) diploma, or has a postsecondary education or college degree;

(ii) Has 750 hours of instructor training in cosmetology at a board approved school; and

(iii) Has one year of work experience at the master level.

(B) A person holding a current cosmetology license at the master level who is a high school graduate, has a general educational development (GED) diploma, or has a postsecondary education or college degree; who has completed the required board approved hours of continuing education; and has board approved work experience as an instructor or in education may, at the board's discretion, be permitted to take the written and the practical examination to become an instructor at the master level.

(3)(A) A person desiring to teach at the esthetician level shall satisfy the board that he or she:

(i) Holds a current cosmetology license at the esthetician or master level and is a high school graduate, has a general educational development (GED) diploma, or has a postsecondary education or college degree;

(ii) Has 500 hours of board approved instructor training in esthetics of at least nine months;

(iii) Has one year of work experience at the esthetician or master level; and

(iv) Has passed both a written and a practical examination to become an instructor in esthetics.

(B) A person holding a current cosmetology license at the esthetician or master level who is a high school graduate, has a general educational development (GED) diploma, or has a postsecondary education or college degree; who has completed the

required board approved hours of continuing education; and has board approved work experience as an instructor or in education may, at the board's discretion, be permitted to take the written and the practical examination to become an instructor at the esthetician level.

(4)(A) A person desiring to teach at the nail technician level shall satisfy the board that he or she:

(i) Holds a current cosmetology license at the nail technician or master level and is a high school graduate, has a general educational development (GED) diploma, or has a postsecondary education or college degree;

(ii) Has 250 hours of board approved instructor training in nail care of at least four months;

(iii) Has one year of work experience at the nail technician or master level; and

(iv) Has passed both a written and a practical examination to become an instructor in nail care.

(B) A person holding a current cosmetology license at the nail technician or master level who is a high school graduate, has a general educational development (GED) diploma, or has a postsecondary education or college degree; who has completed the required board approved hours of continuing education; and has board approved work experience as an instructor or in education may, at the board's discretion, be permitted to take the written and the practical examination to become an instructor at the nail technician level.

(5) Reserved.

(6)(A) A person desiring to teach at the hair designer level shall satisfy the board that he or she:

(i) Holds a current cosmetology license at the hair designer or master level and is a high school graduate, has a general educational development (GED) diploma, or has a postsecondary education or college degree;

(ii) Has 750 hours of board approved instructor training in hair design of at least four months;

(iii) Has one year of work experience at the hair designer or master level; and

(iv) Has passed both a written and a practical examination to become an instructor in hair design.

(B) A person holding a current cosmetology license at the hair designer or master level who is a high school graduate, has a general educational development (GED) diploma, or has a postsecondary education or college degree; who has completed the required board approved hours of continuing education; and has board approved work experience as an instructor or in education may, at the board's discretion, be permitted to take the written and the practical examinations to become an instructor at the hair designer level.

(7) Any teacher or instructor shall renew his or her license to teach cosmetology biennially in odd years by remitting with his or her application a renewal fee in such amount as shall be set by the board by regulation; provided, however, any teacher or instructor who fails to renew his or her certificate of registration to practice as a cosmetologist, esthetician, or nail technician on or before the date established by the board by regulation shall automatically have his or her license to teach or instruct suspended. A person failing to renew his or her instructor's license within two years after expiration shall be required to pay a reinstatement fee after board review.

(8) Nothing in this Code section shall be construed as preventing a person from obtaining a certificate of registration as teacher or instructor who is certified by the Department of Education to teach cosmetology in the state public schools. The certification is limited to those persons who hold a current cosmetology license at the master level and also hold a diploma or certificate of 1,500 credit hours from a board approved school and have completed the three-year teachers training program required by the Department of Education. Such persons shall also pass both a written and a practical examination satisfactory to the board and, upon passage thereof, shall receive a license to teach cosmetology.

(f) All teachers or instructors of cosmetology at all levels seeking renewal of licenses are required to submit to the board proof of completion of 15 hours of continuing education in the cosmetology profession approved by the board at least half of which consists of instruction in teaching methods. (Ga. L. 1963, p. 45, § 12; Ga. L. 1966, p. 195, § 6; Ga. L. 1977, p. 803, § 4; Ga. L. 1979, p. 1327, § 8; Ga. L. 1980, p. 1420, §§ 9, 10; Ga. L. 1983, p. 1219, § 5; Ga. L. 1985, p. 1057, § 10; Ga. L. 1986, p. 10, § 43; Ga. L. 1992, p. 2490, § 1; Ga. L. 1996, p. 1239, § 6; Ga. L. 2000, p. 814, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2001, p. 1077, § 3; Ga. L. 2001, p. 1185, § 2; Ga. L. 2002, p. 415, § 43; Ga. L. 2006, p. 904, § 8/SB 145.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, a colon was added at the end of the introductory language of subsection (c).

OPINIONS OF THE ATTORNEY GENERAL

Inapplicable to technical and vocational public schools. — Statute applies to beauty schools, beauty colleges, and schools of cosmetology; the statute does not apply to technical and vocational schools operated as part of the public school system. 1963-65 Op. Att'y Gen. p. 289 (see O.C.G.A. § 43-10-12).

Applicant to open new school of cosmetology must have 20 (now 15) bona fide students registered with board prior to receiving license or certificate of registration. 1969 Op. Att'y Gen. No. 69-157.

43-10-13. Right to set course of study for students; application for examination.

(a) The board shall have the right to set a course of study for all students of the schools of cosmetology, schools of hair design, schools of esthetics, and schools of nail care within this state.

(b) Before a student shall be eligible to take the examination provided for in Code Section 43-10-9, he or she shall first file with his or her application for examination a transcript showing the number of hours and courses completed from the school or shop attended by the student. (Ga. L. 1963, p. 45, § 5; Ga. L. 1979, p. 1327, § 3; Ga. L. 1980, p. 1420, §§ 2, 3; Ga. L. 1985, p. 1057, § 11; Ga. L. 2000, p. 814, § 1; Ga. L. 2006, p. 904, § 9/SB 145.)

OPINIONS OF THE ATTORNEY GENERAL

Board may require that applicants for master cosmetology examination complete prescribed course of study. 1971 Op. Att'y Gen. No. 71-14.

Board may refuse to give exam to one lacking required amount of study or apprenticeship. — Under Ga. L. 1963, p. 45, § 10 (see O.C.G.A. § 43-10-9) the board has the right and power to refuse to give an examination or license to a person unless that person has completed a 1,500 hour study course at an accredited school, as defined by the cosmetology provisions, or has served as an apprentice in

a beauty salon for a period of at least 3,000 hours. 1963-65 Op. Att'y Gen. p. 289.

Board may not require courses or sanitary standards for public schools. — Board, not having jurisdiction over the public school system of the state, is without authority to set minimum standards of sanitation and courses of study in tuition-free technical and vocational schools operated as a part of the public school system under either the State Board of Education or a local board of education. 1963-65 Op. Att'y Gen. p. 289.

43-10-14. Study by persons 17 years of age and older; registration of apprentices; registration certificate; waiver of education requirements.

(a) Nothing in this chapter shall prohibit any person at least 17 years of age from learning the occupation of cosmetology under a master cosmetologist, provided that such cosmetologist has had at least 36 months' experience and has held a certificate of a master cosmetologist

for at least 36 months. In addition, nothing in this chapter shall prohibit any person at least 17 years of age from learning the occupation of cosmetology under an instructor in a school of cosmetology who has been a cosmetologist for a period of at least one year and has registered under this chapter. Nothing in this chapter shall prohibit any person at least 17 years of age from learning the occupation of hair designer under a cosmetologist holding a master cosmetologist certificate or a hair design certificate, provided that such cosmetologist has had at least 36 months' experience or, under an instructor in a school of cosmetology or school of hair design who has held a certificate as a cosmetologist for a period of at least one year, is qualified to teach said practices and has registered under this chapter. Nothing in this chapter shall prohibit any person at least 17 years of age from learning the occupation of esthetics under a cosmetologist holding a master cosmetologist certificate or an esthetician certificate, provided that such cosmetologist has had at least 36 months' experience or, under an instructor in a school of cosmetology or school of esthetics who has held a certificate as a cosmetologist for a period of at least one year, is qualified to teach said practices and has registered under this chapter. Nothing in this chapter shall prohibit any person at least 17 years of age from learning the occupation of nail care or manicuring under a cosmetologist holding a master cosmetologist certificate or a nail technician certificate, provided that such cosmetologist has had at least 36 months' experience or, under an instructor in a school of cosmetology or school of nail care who has been a licensed cosmetologist for a period of at least one year, is qualified to teach said practices and has registered under this chapter. Any person registered as an apprentice under this Code section on June 30, 1997, shall be eligible to continue such apprenticeship under the person from whom that apprentice was learning the occupation of cosmetology, hair design, esthetics, or nail care or manicuring at the time of registration notwithstanding that the person under whom the apprentice was learning such occupation does not meet the 36 months' experience otherwise required by this Code section. Every shop owner shall have the responsibility for registering apprentices with the division director. The shop owner shall file a statement in writing, showing the apprentice's name and the address of the shop. The board shall have the authority to require the shop owner to furnish to the board the number of hours completed by the apprentice. The shop owner shall remit to the division director a fee in such amount as shall be set by the board by regulation for the registration of the apprentice. The apprentice shall receive a certificate of registration showing the capacity in which he or she is permitted to practice cosmetology. The certificate of registration shall be effective for a period of two years and may be renewed at the end of such period upon the filing of an application on forms furnished by the division director and the payment of a renewal fee in such amount as shall be set by the

board by regulation. A certificate of registration authorizing a person to learn the occupation of cosmetology under a cosmetologist shall not be renewed more than one time; and, upon the expiration of the last certificate of registration issued, such person shall not be permitted to practice in any capacity.

(b) Notwithstanding any other provisions of this Code section, the board shall be authorized to waive any education requirements under this Code section in cases of hardship, disability, or illness or under such other circumstances as the board deems appropriate with respect to any applicant who was enrolled in a board approved school or had completed a board approved study course as of June 30, 2000. (Ga. L. 1963, p. 45, § 11; Ga. L. 1967, p. 727, § 2; Ga. L. 1977, p. 803, § 2; Ga. L. 1979, p. 1327, § 6; Ga. L. 1980, p. 1420, § 7.1; Ga. L. 1983, p. 1219, § 6; Ga. L. 1984, p. 581, § 1; Ga. L. 1985, p. 1057, § 12; Ga. L. 1997, p. 675, § 1; Ga. L. 1998, p. 128, § 43; Ga. L. 2000, p. 814, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2001, p. 1077, § 4; Ga. L. 2001, p. 1185, § 3; Ga. L. 2001, Ex. Sess., p. 321, § 3; Ga. L. 2006, p. 904, § 10/SB 145.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, in subsection (a), “36 months’ experience or,” was substituted for “36 months’ experience,

or” in three places and the comma was deleted following “to teach said practices” in three places.

JUDICIAL DECISIONS

Liability of salon for negligence of apprentice. — In an action by a patron against a hair salon for injuries allegedly caused by the negligence of an apprentice facial esthetician, because of the relationship between the salon and the apprentice imposed by O.C.G.A. § 43-10-14 and the

evidence of the degree of control actually asserted by the salon, summary judgment that the salon was not liable under respondeat superior for any negligent acts of the apprentice and/or employee was not authorized. *Brown v. Who’s Three, Inc.*, 217 Ga. App. 131, 457 S.E.2d 186 (1995).

43-10-15. Suspension, revocation, cancellation, or restoration of certificates of registration; reprimand of certificate holders; fines.

(a) The board, acting upon its own knowledge or written or verified complaint filed by any person, shall have the power to reprimand or power to suspend, revoke, or cancel the certificate of registration of or refuse to grant, renew, or restore a certificate of registration to a holder of any certificate of registration issued pursuant to this chapter upon proof of any one of the following grounds:

(1) Willfully committing any false, fraudulent, or deceitful act or using any forged, false, or fraudulent document in connection with any requirement of this chapter or the rules and regulations of the board;

(2) Willfully failing at any time to comply with the requirements for a certificate of registration under this chapter;

(3) Practicing cosmetology under a false or assumed name;

(4) Willfully permitting an unlicensed person to practice, learn, or teach cosmetology;

(5) Knowingly performing an act which in any way assists an unlicensed person to practice, learn, or teach cosmetology; or

(6) Violating, directly or indirectly, or assisting in the violation of this chapter or any rule or regulation of the board.

(b) The board may impose a fine not to exceed \$500.00 for each violation of any provision of subsection (a) of this Code section. Such fines shall be listed in a schedule contained in the rules and regulations of the board. The licensee shall pay the fine within 30 days after receiving written notification from either the board or a representative of the board unless the licensee requests in writing a hearing before the board. Such request for a hearing must be received by the board within 30 days after receipt of the written notification from the board. Failure either to pay the fine or request a hearing shall result in immediate suspension of the license pending a hearing to determine whether revocation or other disciplinary action should be imposed on the licensee.

(c) The board, for good cause shown and under such conditions as it may prescribe, may restore a certificate of registration to any person, beauty shop or beauty salon, or school or college of cosmetology whose certificate of registration has been suspended, revoked, or canceled.

(d) Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," shall apply to any proceeding under this Code section. (Ga. L. 1979, p. 1327, § 10; Ga. L. 1992, p. 2490, § 2; Ga. L. 2000, p. 814, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Penalty for owning and operating unregistered beauty shop. — If a holder of a certificate of registration to practice cosmetology violates Ga. L. 1979, p. 1327, §§ 1 and 11 (see O.C.G.A. §§ 43-10-8 and 43-10-11) by owning and operating an unregistered beauty shop,

the holder's certificate of registration to practice cosmetology is subject to being reprimanded, suspended, revoked, or canceled by the State Board of Cosmetology pursuant to Ga. L. 1979, p. 1327, § 10 (see O.C.G.A. § 43-10-15). 1980 Op. Att'y Gen. No. 80-23.

RESEARCH REFERENCES

ALR. — Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 ALR 1388.

43-10-16. Injunction against unlicensed or unregistered practice.

The board may bring an action to enjoin any person, firm, or corporation from engaging in the occupation of cosmetology if such person, firm, or corporation, without being licensed or registered to do so by the board, engages in or practices the occupation of cosmetology. The action shall be brought in the county in which such person resides or, in the case of a firm or corporation, where the firm or corporation maintains its principal office; and, unless it appears that such person, firm, or corporation so engaging or practicing cosmetology is licensed or registered, the injunction shall be issued, and such person, firm, or corporation shall be perpetually enjoined from engaging in such activities throughout the state. It shall not be necessary in order to obtain the equitable relief provided in this Code section for the board to allege and prove that there is no adequate remedy at law. It is declared that the unlicensed activities referred to in this Code section are a menace and a nuisance dangerous to the public health, safety, and welfare. (Ga. L. 1967, p. 727, § 3; Ga. L. 2000, p. 814, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Injunctions, § 145.

C.J.S. — 43A C.J.S., Injunctions, § 135. 66 C.J.S., Nuisances, § 121 et seq.

43-10-17. Employment of persons to wash, shampoo, comb, and brush hair in beauty shops or salons.

Notwithstanding any other provision of this chapter, a beauty shop or salon shall be authorized to employ persons to wash, shampoo, comb, and brush hair, and such persons shall not be required to be registered by the board. (Ga. L. 1977, p. 803, § 3; Ga. L. 1979, p. 1327, § 7; Ga. L. 1980, p. 1420, § 8; Ga. L. 1985, p. 1057, § 13; Ga. L. 1997, p. 675, § 2; Ga. L. 2000, p. 814, § 1; Ga. L. 2006, p. 904, § 11/SB 145.)

43-10-18. Home beauty shops.

(a) Nothing contained in this chapter nor any rule or regulation adopted in implementation hereof shall be construed to prohibit any person from operating a beauty shop within his or her home or residence, provided that such shop meets and complies with all of the provisions of this chapter and the rules and regulations promulgated by the board.

(b) It shall not be necessary for any person operating a beauty shop in a private home to post a sign denoting same to be a beauty shop unless the person elects to do so. (Ga. L. 1963, p. 45, §§ 5, 20; Ga. L.

1966, p. 195, § 7; Ga. L. 1979, p. 1327, § 3; Ga. L. 1980, p. 1420, § 3; Ga. L. 2000, p. 814, § 1.)

43-10-18.1. Authorization to employ licensed barber; exemption from barbering licensure provisions.

A beauty shop or salon licensed under this chapter shall be authorized to employ a barber licensed under Chapter 7 of this title. A beauty shop or salon employing such a barber shall not be subject to the licensure provisions of Chapter 7 of this title. (Code 1981, § 43-10-18.1, enacted by Ga. L. 1985, p. 1057, § 14; Ga. L. 2000, p. 814, § 1.)

Code Commission notes. — Ga. L. 1985, p. 1057, § 14 and Ga. L. 1985, p. 1133, § 2 both enacted Code sections designated as Code Section 43-10-18.1. The Code section enacted by the latter Act was redesignated as Code Section 43-10-18.2 pursuant to Code Section 28-9-5. Pursuant to Code Section 28-9-5, in 1985, “this title” was substituted for “Title 43” in two places.

43-10-18.2. Exemption from licensing requirement for nursing home facility.

Notwithstanding any other provision of this chapter, premises made available for a beauty shop within a facility licensed as a nursing home pursuant to Article 1 of Chapter 7 of Title 31 shall not be required to be licensed or registered as a beauty shop under this chapter, or otherwise be subject to any provisions of this chapter except for inspections, investigations, or both, for alleged violations of this chapter by any person licensed under this chapter, if cosmetologist services in such premises are rendered only to residents of the nursing home. (Code 1981, § 43-10-18.2, enacted by Ga. L. 1985, p. 1133, § 2; Ga. L. 2000, p. 814, § 1.)

Code Commission notes. — Ga. L. 1985, p. 1057, § 14 and Ga. L. 1985, p. 1133, § 2 both enacted Code sections designated as Code Section 43-10-18.1. The Code section enacted by the latter Act was redesignated as this Code section pursuant to Code Section 28-9-5.

43-10-18.3. Serving physically disabled persons in their homes.

(a) Notwithstanding any other provision of this chapter, cosmetology services may be performed by a licensed cosmetologist in a client's residence, a nursing home, or a hospital when the client for reasons of ill health, infirmity, or other physical disability is unable to go to the licensed beauty shop or salon for regular cosmetology services.

(b) The board is authorized to adopt reasonable rules and regulations prescribing requirements and conditions for the performance of the services authorized in subsection (a) of this Code section. (Code 1981,

§ 43-10-18.3, enacted by Ga. L. 1987, p. 1089, § 1; Ga. L. 2000, p. 814, § 1.)

43-10-19. Penalty.

(a) If any person not lawfully entitled to a certificate of registration under this chapter shall practice the occupation of a cosmetologist; or if any such person shall endeavor to learn the trade of a cosmetologist by practicing the same under the instructions of a cosmetologist or other person, other than as provided in this chapter; or if any such person shall instruct or attempt to instruct any person in such trade; or if any proprietor of or person in control of or operating any beauty shop, school of cosmetology, school of hair design, school of esthetics, or school of nail care shall knowingly employ for the purpose of practicing such occupation any cosmetologist not registered under this chapter; or if any person, beauty shop, salon, or school shall engage in any of the acts covered in this chapter though not registered under the provisions of this chapter; or if any person shall falsely or fraudulently pretend to be qualified under this chapter to practice or learn such trade or occupation; or if any person shall violate any provision of the chapter for which a penalty is not specifically provided, he or she shall be guilty of a misdemeanor.

(b) Any person who operates or manages a beauty shop, salon, or school that employs a person who does not possess a license as provided in this chapter shall be guilty of a misdemeanor. (Ga. L. 1963, p. 45, §§ 16-18; Ga. L. 1985, p. 1057, § 15; Ga. L. 2000, p. 814, § 1; Ga. L. 2006, p. 904, § 12/SB 145.)

43-10-20. Teaching of cosmetology in prisons; certification of registration.

(a) For the purposes of this chapter, the teachers and instructors of and courses of instruction or training in cosmetology operated by the Department of Corrections shall be considered to be subject to the same standards and to be part of the cosmetology programs that are approved by the Technical College System of Georgia or the Department of Education as provided for by paragraphs (10), (11), (13), and (14) of Code Section 43-10-1 and paragraph (8) of subsection (e) of Code Section 43-10-12.

(b) The board shall be required to test an inmate who is an applicant for a certificate of registration under this chapter who has completed successfully a cosmetology training program operated by the Department of Corrections and who meets the requirements stated in Code Section 43-10-9. If such inmate passes the applicable written and practical examinations, the board may issue the appropriate certificate

of registration to such inmate after consideration of all requirements under Code Sections 43-10-9 and 43-1-19; provided, however, that the board shall not apply the provisions of paragraph (4) of subsection (a) of Code Section 43-1-19 to such inmate based solely upon such person's status as an inmate and shall apply such provisions in the same manner as would otherwise be applicable to an applicant who is not an inmate. (Code 1981, § 43-10-20, enacted by Ga. L. 2004, 617, § 1; Ga. L. 2008, p. 335, § 7/SB 435; Ga. L. 2011, p. 752; § 43/HB 142.)

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted "paragraphs (10), (11), (13), and (14) of Code Section 43-10-1 and paragraph (8) of subsection (e) of Code Section 43-10-12" for "paragraphs (8), (9), and (10) of Code Section 43-10-1 and paragraph (6) of subsection (e) of Code Section 43-10-12" at the end of subsection (a).

Cross references. — Vocational training of inmates, § 42-10-4.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, "para-

graph (6) of subsection (e)" was substituted for "paragraph (6)" near the end of subsection (a).

Editor's notes. — Former O.C.G.A. § 43-10-20 was part of the original Code enactment (Ga. L. 1981, Ex. Sess., p. 8) and was amended by Ga. L. 1986, p. 843, § 5 and Ga. L. 1992, p. 2490, § 3.

Ga. L. 2000, p. 814, § 1, effective July 1, 2000, purportedly repealed this Code section which had been previously repealed by Ga. L. 1992, p. 3137, § 9, effective July 1, 1992.

CHAPTER 10A

PROFESSIONAL COUNSELORS, SOCIAL WORKERS,
AND MARRIAGE AND FAMILY THERAPISTS

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| 43-10A-2. | Declaration of purpose. | 43-10A-14. | Fees. |
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| 43-10A-6. | Separate standards committees for professional counseling specialty, social work specialty, and marriage and family therapy specialty. | 43-10A-18. | Availability of injunction in enforcement of chapter. |
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| 43-10A-11. | Requirements for licensure in professional counseling. | 43-10A-23. | Insurance coverage for specialty practitioners. |
| 43-10A-12. | Requirements for licensure in social work; authorized services. | 43-10A-24. | Termination [Repealed]. |

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, former Chapter 7A was redesignated as present Chapter 10A.

Administrative rules and regulations. — Organization, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Composite Board of Professional Counselors, Social Workers and Marriage and Family Therapists, Chapter 135-1.

Code of Ethics, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Composite Board of Professional Counselors, Social Workers and Marriage and Family Therapists, Chapter 135-7.

Law reviews. — For comment, "The Psychotherapist-Client Testimonial Privilege: Defining the Professional Involved," see 34 Emory L.J. 777 (1985).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266,

284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public

Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

Am. Jur. Trials. — Social Worker Malpractice for Failure to Protect Foster Children, 41 Am. Jur. Trials 1.

Clergy Malpractice for Negligent Counseling, 47 Am. Jur. Trials 271.

Trial Report: Third Party Suit Against Therapists for Implanting False Memory of Childhood Molestation, 57 Am. Jur. Trials 313.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S.,

Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Defamation of psychiatrist, psychologist, or counselor, 38 ALR4th 874.

43-10A-1. Short title.

This chapter shall be known and may be cited as the “Professional Counselors, Social Workers, and Marriage and Family Therapists Licensing Law.” (Code 1981, § 43-7A-1, enacted by Ga. L. 1984, p. 1406, § 1.)

43-10A-2. Declaration of purpose.

It is declared to be the purpose of the General Assembly that the activities of certain persons who utilize certain titles relating to or who practice professional counseling, social work, and marriage and family therapy be regulated to ensure the protection of the health, safety, and welfare of the people of this state. (Code 1981, § 43-7A-2, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 1993, p. 330, § 1.)

43-10A-3. Definitions.

As used in this chapter, the term:

(1) “Advertise” means, but is not limited to, the issuing of or causing to be distributed any card, sign, or other device or the causing or permitting any sign or marking on or in any building or structure, or in any newspaper, magazine, or directory, or on radio or television.

(2) “Allied profession” means the practice of medicine, psychiatric nursing, psychology, or pastoral counseling.

(3) “Board” means the Georgia Composite Board of Professional Counselors, Social Workers, and Marriage and Family Therapists established by this chapter.

(3.1) “Commission on Rehabilitation Counselor Certification” means the national certifying agency for rehabilitation counselors as recognized by the National Commission for Certifying Agencies.

(4) "Counseling" means those techniques used to help persons learn how to solve problems and make decisions related to personal growth, vocation, family, social, and other interpersonal concerns.

(5) "Direction" means the ongoing administrative overseeing by an employer or superior of a specialty practitioner's work. The person providing direction shall be responsible for assuring the quality of the services rendered by that practitioner and shall ensure that qualified supervision or intervention occurs in situations which require expertise beyond that of the practitioner. Direction may be provided by any person acceptable to the standards committee for that specialty in which the practitioner is working.

(6) "Division director" means the director of the professional licensing boards division. The division director shall serve as secretary to the board.

(7) "Fee" means money or anything of value, including but not limited to a salary, offered or received as compensation in return for rendering services in any specialty.

(8) "Marriage and family therapy" means that specialty which evaluates and treats emotional and mental problems and conditions, whether cognitive, affective, or behavioral, resolves intrapersonal and interpersonal conflicts, and changes perception, attitudes, and behavior; all within the context of marital and family systems. Marriage and family therapy includes, without being limited to, individual, group, couple, sexual, family, and divorce therapy. Marriage and family therapy involves an applied understanding of the dynamics of marital and family systems, including individual psychodynamics, the use of assessment instruments that evaluate marital and family functioning, designing and recommending a course of treatment, and the use of psychotherapy and counseling.

(9) "Practice a specialty" or "practice" means to offer to render for a fee or to render for a fee any service involving the application of principles, methods, or procedures of professional counseling, social work, or marriage and family therapy.

(10) "Professional counseling" means that specialty which utilizes counseling techniques based on principles, methods, and procedures of counseling that assist people in identifying and resolving personal, social, vocational, intrapersonal and interpersonal concerns; utilizes counseling and psychotherapy to evaluate, treat, and recommend a course of treatment for emotional and mental problems and conditions, whether cognitive, behavioral, or affective, provided that the counselor shall have training and experience working with people with mental illness, mental retardation, or substance abuse; administers and interprets educational and vocational assessment instru-

ments and other tests which the professional counselor is qualified to employ by virtue of education, training, and experience; utilizes information, community resources, and goal setting for personal, social, or vocational development; utilizes individual and group techniques for facilitating problem solving, decision making, and behavior change; utilizes functional assessment and vocational planning and guidance for persons requesting assistance in adjustment to a disability or disabling condition; utilizes referral for persons who request counseling services; performs service planning; and utilizes and interprets counseling research.

(11) "Psychotherapeutic techniques" means those specific techniques involving the in-depth exploration and treatment of interpersonal and intrapersonal dynamics but shall not include the performance of those activities exclusively reserved to any other business or profession by any other chapter of this title.

(12) "Recognized educational institution" means any educational institution which grants a bachelor's, master's, specialist, or doctoral degree and which is recognized by an accrediting body acceptable to the board.

(13) "Social work" means that specialty which helps individuals, marriages, families, couples, groups, or communities to enhance or restore their capacity for functioning: by assisting in the obtaining or improving of tangible social and health services; by providing psychosocial evaluations, in-depth analyses and determinations of the nature and status of emotional, cognitive, mental, behavioral, and interpersonal problems or conditions; and by counseling and psychotherapeutic techniques, casework, social work advocacy, psychotherapy, and treatment in a variety of settings which include but are not limited to mental and physical health facilities, child and family service agencies, or private practice.

(14) "Specialty" means social work, marriage and family therapy, or professional counseling, or any combination thereof.

(15) "Supervision" means the direct clinical review, for the purpose of training or teaching, by a supervisor of a specialty practitioner's interaction with a client. It may include, without being limited to, the review of case presentations, audio tapes, video tapes, and direct observation in order to promote the development of the practitioner's clinical skills.

(16) "Supervisor" means a person who meets the requirements established by the standards committee for that specialty which is being supervised and who is either licensed under this chapter or is a psychiatrist or a psychologist.

(17) "The Commission on Accreditation for Marriage and Family Therapy Education" means the national accrediting agency for mar-

riage and family therapy education as recognized by the United States Department of Education.

(18) "The Council on Social Work Education" means the national accrediting agency for social work education as recognized by the United States Department of Education and the Council on Postsecondary Accreditation. (Code 1981, § 43-7A-3, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 1987, p. 3, § 43; Ga. L. 1990, p. 1484, § 1; Ga. L. 1993, p. 330, § 2; Ga. L. 1994, p. 450, § 1; Ga. L. 1995, p. 1302, § 17; Ga. L. 1997, p. 452, § 1; Ga. L. 2000, p. 1706, § 9; Ga. L. 2002, p. 1479, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, the definitions in paragraphs (6) and (7) were arranged in alphabetical order.

43-10A-4. Creation of board; composition; appointment; removal; vacancies.

(a) There is created the Georgia Composite Board of Professional Counselors, Social Workers, and Marriage and Family Therapists. The board shall consist of ten members who have been residents of this state for at least 12 months prior to taking office. The ten members shall be constituted as follows:

(1) Three members licensed in professional counseling, two of whom shall be designated at the time of their appointment to serve an initial term ending December 31, 1988, and one of whom shall be designated to serve an initial term ending December 31, 1987;

(2) Three members licensed as social workers, one of whom shall be designated at the time of appointment to serve an initial term ending December 31, 1988, the other two of whom shall be designated to serve an initial term ending December 31, 1987;

(3) Three members licensed as marriage and family therapists, two of whom shall be designated at the time of their appointment to serve an initial term ending December 31, 1987, and one of whom shall be designated to serve an initial term ending December 31, 1988; and

(4) One member who shall represent the public at large and have no professional connection with any specialty to serve an initial term ending December 31, 1988.

(b) All members of the board shall be appointed by the Governor, subject to confirmation by the Senate. Those members first appointed to the board under this chapter shall serve for initial terms of office beginning September 1, 1985. Those members of the board required to be licensed and who are first appointed to the board shall be persons

who are practicing in the designated specialty at the time of appointment and who must be licensed therein as required within 12 months following their appointment.

(c) After the initial terms specified in subsection (a) of this Code section, members of the board shall take office on the first day of January immediately following the expired term of that office and shall serve for a term of three years and until the appointment and qualification of their respective successors. No member shall serve on the board more than two consecutive terms.

(d) Members of the board may be removed by the Governor, after notice and opportunity for hearing, for incompetence, neglect of duty, unprofessional conduct, or conviction of any felony.

(e) Vacancies occurring on the board, other than those caused by expiration of a term of office, shall be filled in the same manner as the original appointment to the position vacated for the remainder of the unexpired term and until a successor is appointed and qualified.

(f) Any person appointed to the board when the Senate is not in regular session may serve on the board without Senate confirmation until the Senate acts upon that appointment. (Code 1981, § 43-7A-4, enacted by Ga. L. 1984, p. 1406, § 1.)

43-10A-5. Requirement of oath; quorum; powers and duties of board; ethics; reimbursement of members; meetings.

(a) The members of the board shall take an oath to perform faithfully the duties of their office. Within 30 days after taking the oath of office, the first board appointed under this chapter shall meet for an organizational meeting on call by the division director. At such meeting and at an organizational meeting in January every odd-numbered year thereafter, the board shall elect from its members a chairperson and vice chairperson to serve for terms of two years.

(b) The quorum for the transaction of business of the board shall be as provided in subsection (b) of Code Section 43-1-12.

(c) Unless specifically delegated to a standards committee pursuant to Code Section 43-10A-6, the board shall have the following powers and duties:

(1) To adopt, amend, and repeal such rules and regulations not inconsistent with this chapter necessary for the proper administration and enforcement of this chapter;

(2) To issue, renew, and reinstate the licenses of duly qualified applicants for licensure to practice a specialty in this state;

(3) To deny, suspend, revoke, or otherwise sanction licenses to practice a specialty in this state;

(4) To initiate investigations for the purpose of discovering violations of this chapter;

(5) To conduct hearings upon charges calling for the discipline of a licensee or on violations of this chapter;

(6) To issue to specialists licensed under this chapter certificates under the seal of the board evidencing such licensure and signed, either by hand or facsimile signature, by the chairperson of the board and the division director;

(7) To adopt a seal; and

(8) To do all other things necessary to administer and enforce this chapter and all rules and regulations adopted by the board pursuant to this chapter.

(d) The board shall adopt a code of ethics to govern the behavior of persons licensed under this chapter, including but not limited to the prohibiting of practice in those areas in which the specialty practitioner has not obtained university level graduate training or substantially equivalent supervised experience.

(e) Each member of the board shall be reimbursed as provided in subsection (f) of Code Section 43-1-2.

(f) After a person has applied for licensure, no member of the board may supervise or direct such applicant for a fee nor shall any member vote on any applicant previously supervised or directed by that member.

(g) The board shall hold at least two regular meetings each year. Additional meetings may be held upon the call of the chairperson of the board or at the written request of any four members of the board. (Code 1981, § 43-7A-5, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 2000, p. 1706, § 19.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, the internal reference in the introductory language of subsection (c) was changed to “Code

Section 43-10A-6” to reflect the redesignation of this chapter as Chapter 10A.

43-10A-6. Separate standards committees for professional counseling specialty, social work specialty, and marriage and family therapy specialty.

(a) Those members of the board from the professional counseling specialty, the social work specialty, and the marriage and family therapy specialty shall constitute a separate standards committee for

their respective specialty. Each standards committee by majority vote shall approve or disapprove the granting of all licenses in that specialty, approve the examination required of applicants for licensure in that committee's specialty and provide for the grading of that examination, and provide for other matters relating to licensure in that specialty.

(b) No decision of a standards committee shall become effective until approved by the board. The board may initiate or otherwise act regarding any matter in which a standards committee is authorized to act. No decision of the board regarding a particular specialty shall become effective without the approval of at least two of the members of the standards committee for that specialty.

(c) Meetings of a standards committee shall be reimbursed on the same basis as board meetings. (Code 1981, § 43-7A-6, enacted by Ga. L. 1984, p. 1406, § 1.)

43-10A-7. Licensing requirement; exceptions.

(a) Except as otherwise provided in this chapter, a person who is not licensed under this chapter shall not practice professional counseling, social work, or marriage and family therapy, nor advertise the performance of such practice, nor use the title "professional counselor," "associate professional counselor," "social worker," "marriage and family therapist," or "associate marriage and family therapist," nor use any words, letters, titles, or figures indicating or implying that the person is a professional counselor, associate professional counselor, social worker, marriage and family therapist, or associate marriage and family therapist or is licensed under this chapter.

(b) The prohibition of subsection (a) of this Code section shall not apply to the following persons; provided, however, that no such person shall hold himself or herself out as being licensed to practice professional counseling, social work, or marriage and family therapy or any combination thereof or use the words "licensed" or "licensure" or any other words, letters, titles, images, or figures stating or implying that he or she is licensed to practice any such specialty, and no organization shall present itself as authorized to license individuals to practice any such specialty:

(1) Persons licensed to practice medicine or psychology under Chapter 34 or 39, respectively, of this title;

(2) Persons engaged in the practice of a specialty as an employee of any agency or department of the federal government or any licensed hospital or long-term care facility, but only when engaged in that practice as an employee of such agency, department, hospital, or facility;

(3)(A) Persons who, prior to July 1, 2000, engaged in the practice of a specialty as an employee of any community service board or similar entity created by general law to provide services to persons with disabilities, as defined in Chapter 2 of Title 37, or any agency or department of the state or any of its political subdivisions, but only when engaged in that practice as an employee of such an agency or department.

(B) Persons who engage in the practice of social work as employees of any community service board or similar entity created by general law to provide services to persons with disabilities, as defined in Chapter 2 of Title 37, or any agency or department of the state or any of its political subdivisions, but only when engaged in that practice as employees of such community service board or similar entity, agency, or department, and persons or entities which contract to provide social work services with any community service board or similar entity or any agency or department of the state or any of its political subdivisions, but such contracting persons and entities shall only be exempt under this subparagraph when engaged in providing social work services pursuant to those contracts and shall only be exempt until January 1, 1996.

(C) Persons who engage in the practice of professional counseling as employees of privately owned correctional facilities, the Department of Corrections, Department of Community Health, Department of Public Health, Department of Behavioral Health and Developmental Disabilities, Department of Human Services, any county board of health, or any community service board or similar entity created by general law to provide services to persons with disabilities, as defined in Chapter 2 of Title 37, but only when engaged in that practice as employees of such privately owned correctional facility, department, board, or entity and persons or entities which contract to provide professional counseling services with such department or county board of health, but such contracting persons and entities shall only be exempt under this subparagraph when engaged in providing professional counseling services pursuant to those contracts and shall only be exempt until January 1, 1996;

(4) Students of a recognized educational institution who are preparing to become practitioners of a specialty, but only if the services they render as such practitioners are under supervision and direction and their student status is clearly designated by the title "trainee" or "intern";

(5) Persons who have obtained a master's degree from a program accredited by the Council on Social Work Education and who are practicing social work under direction and supervision while prepar-

ing to take the master's social work licensing examination, but only for a period of up to one year following the granting of such degree;

(6) Persons who have obtained one of the graduate degrees required for licensure as a professional counselor or marriage and family therapist and who are practicing such specialty under supervision and direction in order to obtain the experience required for licensure;

(7) Elementary, middle, or secondary school counselors and school social workers certificated as such by the Department of Education, Professional Standards Commission, or its successor agency but only when practicing within the scope of such certification and only when designated by the title "school counselor," "school social worker," or a title designated by the school system in which they are employed for persons practicing within such certification;

(8) Persons registered as rehabilitation suppliers by the Georgia Board of Workers' Compensation, including those registered as of July 1, 1992, but only when practicing rehabilitation counseling as a rehabilitation supplier for workers' compensation claimants and only so long as they do not use any titles other than titles describing the certifications or licenses they are required to hold under Code Section 34-9-200.1;

(9) Active members of the clergy but only when the practice of their specialty is in the course of their service as clergy;

(10) Members of religious ministries responsible to their established ecclesiastical authority who possess a master's degree or its equivalent in theological studies;

(11) Persons engaged in the practice of a specialty in accordance with Biblical doctrine in public or nonprofit agencies or entities or in private practice;

(12) Persons engaged in the practice of a specialty as an employee of the Division of Family and Children Services of the Department of Human Services but only when engaged in such practice as an employee of that division;

(13) Persons who have obtained a master's degree from a program accredited by the Council on Social Work Education and who are engaged in the practice of community organization, policy, planning, research, or administration may use the title "social worker" and may only engage in such practice;

(14) Persons who have obtained a bachelor's degree in social work from a program accredited by the Council on Social Work Education may use the title "social worker" and may practice social work, but

they may not practice autonomously and may only practice under direction and supervision, and, notwithstanding the definitions in paragraphs (5) and (15) of Code Section 43-10A-3, such supervision shall be provided by a social worker who, as a minimum, has been awarded a bachelor's or a master's degree in social work from a program accredited by the Council on Social Work Education and who has completed at least two years of post-degree practice in the field of social work;

(15) Addiction counselors who have met the certification requirements of the Georgia Addiction Counselors' Association or any other similar private association of addiction counselors which association includes among its certification requirements the following:

(A) Attainment of a high school diploma or a general educational development (GED) equivalency diploma;

(B) Completion of at least 4,000 hours of full-time paid experience under direction provided by a person acceptable to the association in the practice of chemical dependency and abuse counseling;

(C) Completion of at least 180 hours of education in the field of addiction and addiction counseling or treatment; and

(D) Completion of at least 220 hours of supervision provided by a supervisor who meets the qualifications established by the association and which teaches chemical dependency and abuse counseling.

Services which may be provided under this paragraph shall be limited to those practices sanctioned by the certifying association and shall in any event be limited to the provision of chemical dependency treatment in the following settings: screening; intake; orientation; assessment for addiction diseases; treatment planning; individual, family, and group addiction counseling; case management; crisis intervention; client education; referral, reporting, and record keeping; and consultation with other professionals in regard to client treatment and services. Persons exempt under this paragraph shall not use any title indicating or implying that they are licensed under this chapter;

(15.1) Persons who are training to be addiction counselors but only when such persons are:

(A) Employed by an agency or facility that is licensed to provide addiction counseling;

(B) Supervised and directed by a supervisor who meets the qualifications established by the Georgia Addiction Counselor's

Association or any other similar private association of addiction counselors which includes among its certification requirements the criteria specified in paragraph (15) of this subsection;

(C) Graduated from high school or have a general educational development (GED) equivalency diploma; and

(D) Actively seeking certification in accordance with the requirements of paragraph (15) of this subsection.

No person shall qualify for the exception provided under this paragraph for a period in excess of three years. Services which may be provided under this paragraph shall be limited to those practices sanctioned by the certifying association and shall in any event be limited to the provision of chemical dependency treatment in the following settings: screening; intake; orientation; assessment for addiction diseases; treatment planning; individual, family, and group addiction counseling; case management; crises intervention; client education; referral, reporting, and record keeping; and consultation with other professionals in regard to client treatment and services. Persons exempt under this paragraph shall not use any title indicating or implying that they are licensed under this chapter;

(16) Any person engaged in the practice of professional counseling as an employee or student peer counselor of the University System of Georgia or its educational units, the Technical College System of Georgia or its educational units, or of a public or private college or university within this state, but only when engaged in that practice as such an employee or student peer counselor and excepting the use of psychotherapeutic techniques to evaluate and treat emotional and mental illness, disorder, or dysfunction;

(17) Persons who engage in the practice of professional counseling, excluding the use of psychotherapy, as employees of organizations which maintain, now or in the future, accreditation from the Commission on Accreditation of Rehabilitation Facilities or the national Accreditation Council for Agencies Serving the Blind and Visually Handicapped, but only when those persons are providing those services as employees of those organizations pursuant to contracts between such organizations and the state or a department, agency, county, municipality, or political subdivision of the state;

(18) Persons engaged in the practice of a specialty as an employee of the Department of Labor, but only when engaged in such practice as an employee of such department; and

(19) Persons currently licensed to practice a specialty in another jurisdiction and who are practicing such specialty within a defined disaster area in order to alleviate the impact on persons affected by a

disaster as defined in paragraph (1) of Code Section 38-3-91 or a state of emergency as defined in paragraph (7) of Code Section 38-3-3, but only when such specialty services are provided without cost to the recipients, and only for a maximum of 30 consecutive days following a disaster or a state of emergency.

(c) Unless exempt under paragraph (1), (2), (4), (5), (6), (11), (13), (14), (15), (16), or (17) of subsection (b) of this Code section, a person who is not licensed under this chapter shall not practice a specialty for any corporation, partnership, association, or other business entity which uses in its corporate, partnership, association, or business name any words, letters, titles, or figures indicating or implying that such entity or any of its employees, officers, or agents are practicing a specialty.

(d) Notwithstanding any other provision of law to the contrary, a person who is exempt from licensure pursuant to paragraph (9) of subsection (b) of this Code section may be authorized by the board to serve as a supervisor as defined in paragraph (16) of Code Section 43-10A-3 without being licensed if such person meets all the requirements to be licensed and to serve as a supervisor in the specialty for which such person would serve as a supervisor and has filed the necessary documentation with and been approved by the standards committee of that specialty as required by the rules of the board.

(e) Nothing in this chapter shall be construed to prohibit the licensed practice of nursing or the performance of duties which constitute a standard procedure of the practice of medicine by any person acting under the direct supervision of a licensed medical doctor, provided that such supervised persons are qualified by virtue of their education, training, or experience to perform such duties and that such persons shall not use any titles indicating or implying that they are licensed under this chapter. (Code 1981, § 43-7A-7, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 1987, p. 3, § 43; Ga. L. 1989, p. 825, § 1; Ga. L. 1993, p. 330, § 3; Ga. L. 1994, p. 97, § 43; Ga. L. 1994, p. 404, § 1; Ga. L. 1994, p. 450, § 2; Ga. L. 1994, p. 953, § 1; Ga. L. 1996, p. 701, §§ 1, 2; Ga. L. 1996, p. 843, § 1; Ga. L. 1996, p. 1073, § 1; Ga. L. 1997, p. 1387, §§ 1, 2; Ga. L. 2000, p. 136, § 43; Ga. L. 2000, p. 1584, § 2; Ga. L. 2003, p. 312, § 1; Ga. L. 2008, p. 335, § 7/SB 435; Ga. L. 2009, p. 453, § 1-44/HB 228; Ga. L. 2009, p. 995, § 1/HB 60; Ga. L. 2011, p. 705, § 5-25/HB 214.)

The 2009 amendments. — The first 2009 amendment, effective July 1, 2009, in subparagraph (b)(3)(C), substituted “Department of Community Health, Department of Behavioral Health and Developmental Disabilities, Department of Human Services” for “Department of Human

Resources” near the beginning, and inserted “county” near the end; and, in paragraph (b)(12), substituted “Department of Human Services” for “Department of Human Resources”. The second 2009 amendment, effective July 1, 2009, in subsection (b), added the proviso at the end of the

introductory paragraph of subsection (b) and substituted a semicolon for a period at the end of paragraph (b)(15.1).

The 2011 amendment, effective July 1, 2011, inserted “Department of Public Health,” near the middle of subparagraph (b)(3)(C).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, in subsection (b), “Division of Family and Children Services of the Department of Human Resources” was substituted for “Department of Family and Children Services” and “division” was substituted for “department” in paragraph (12) and, in paragraph (14), “paragraphs (5) and (15) of Code Section 43-10A-3” was substituted

for “paragraph (15) and (16) of this Code section”.

Pursuant to Code Section 28-9-5, in 1994, the amendments by Ga. L. 1994, p. 953, Ga. L. 1994, p. 404, and Ga. L. 1994, p. 450, each purporting to add a new paragraph (15) in subsection (b), were added as paragraphs (15), (16), and (17), respectively, in subsection (b), and, in subsection (c), “(15), (16), or (17)” was substituted for “or (15)”.

Law reviews. — For note on the 1994 amendment of this Code section, see 11 Georgia St. U.L. Rev. 233 (1994). For note on the 2003 amendment to this Code section, see 20 Georgia St. U.L. Rev. 223 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Use of title “professional school counselor.” — Practicing school counselors may use the title “professional school counselors” so long as the counselors meet

the requirements of O.C.G.A. § 43-10A-7(b)(7). 1997 Op. Att’y Gen. No. U97-31.

JUDICIAL DECISIONS

Testimony in child molestation trial. — Testimony from an unlicensed psychologist was not rendered inadmissible in a prosecution for child molestation and attempted child molestation based solely on a witness’s lack of licensure as

Georgia law carved out an exception to the licensing requirements for those witnesses who, like the state’s expert, were practicing under supervision in order to obtain a license. *Nelson v. State*, 279 Ga. App. 859, 632 S.E.2d 749 (2006).

43-10A-8. Eligibility for licensure.

No person shall be eligible for licensure under this chapter unless such person furnishes satisfactory evidence to the board of all of the following:

(1) Having met the education, training, and experience requirements of Code Section 43-10A-11, 43-10A-12, or 43-10A-13 regarding that specialty for which a license is sought;

(2) Having successfully passed the examination established for that specialty under Code Section 43-10A-9, except that persons meeting the requirements of subparagraph (a)(2)(A) of Code Section 43-10A-13 shall not be required to pass such examination;

(3) Having paid any required license fee; and

(4) Having furnished at least two personal references from supervisors, teachers, or any combination thereof. (Code 1981, § 43-7A-8,

enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 1989, p. 825, § 2; Ga. L. 1996, p. 843, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, the internal references in paragraphs (1) and (2) were changed to reflect the redesignation of this chapter as Chapter 10A.

Administrative rules and regula-

tions. — Application for licensure, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Composite Board of Professional Counselors, Social Workers and Marriage and Family Therapists, Chapter 135-3.

43-10A-9. Examination.

The board shall provide for the conduct of examinations for licensure in each specialty at least twice a year. Examinations may be written, oral, experiential, or any combination thereof and shall deal with such theoretical and applied fields as prescribed by the board. The examinee's name shall not be disclosed to any person grading the examination until that grading is complete. (Code 1981, § 43-7A-9, enacted by Ga. L. 1984, p. 1406, § 1.)

43-10A-10. Licensure without examination.

The board may issue a license without examination to any applicant licensed in a specialty under the laws of another jurisdiction having requirements for licensure in that specialty which are substantially equal to the licensure requirements for that specialty in this state. (Code 1981, § 43-7A-10, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 1990, p. 1484, § 2.)

43-10A-11. Requirements for licensure in professional counseling.

(a) The education, experience, and training requirements for licensure in professional counseling are as follows:

(1) For licensure as an associate professional counselor, a master's degree from a recognized educational institution in a program that is primarily counseling in content or in a program of applied psychology, which degree includes a supervised internship or practicum as part of the degree program and registration with the board of an acceptable contract for obtaining the post-master's experience under direction and supervision required for licensure as a professional counselor; and

(2) For licensure as a professional counselor:

(A) A doctoral degree from a recognized educational institution in a program that is primarily counseling in content and requires

at least one year of supervised internship in a work setting acceptable to the board; or

(B) A specialist degree from a recognized educational institution in a program that is primarily counseling in content with supervised internship or practicum and two years of post-master's directed experience under supervision in a setting acceptable to the board; or

(C)(i) A master's degree in rehabilitation counseling or in a program that is primarily counseling in content from a recognized educational institution;

(ii) An internship or practicum supervised either by a supervisor, as defined in paragraph (16) of Code Section 43-10A-3, or by a Certified Rehabilitation Counselor certified as such by the Commission on Rehabilitation Counselor Certification;

(iii) The Certified Rehabilitation Counselor designation from the Commission on Rehabilitation Counselor Certification; and

(iv) Three years of post-master's directed experience providing rehabilitation services in a rehabilitation setting under supervision provided either by a supervisor, as defined in paragraph (16) of Code Section 43-10A-3, or by a Certified Rehabilitation Counselor certified as such by the Commission on Rehabilitation Counselor Certification. Up to one year of such experience may have been in an approved practicum or internship placement as part of the degree program; or

(D) A master's degree from a recognized educational institution in a program that is primarily counseling in content with supervised internship or practicum and four years of post-master's directed experience under supervision in a setting acceptable to the board. Up to one year of such experience may have been in an approved practicum placement as part of the degree program; or

(E) A master's degree from a recognized educational institution in a program of applied psychology with supervised internship or practicum and four years of post-master's directed experience under supervision in a setting acceptable to the board. Up to one year of such experience may have been in an approved practicum placement as part of the degree program. Supervision of the practicum or internship and the post-master's directed experience shall be provided by a supervisor, as defined in paragraph (16) of Code Section 43-10A-3, except that such supervision may be provided all or in part by a psychologist or, before January 1, 2004, by a person with a master's degree from a recognized educational institution in a program of applied psychology.

(b) For purposes of subsection (a) of this Code section, work settings acceptable to the board may include, but are not limited to, educational, rehabilitation, career development, mental health, community, or industrial organizations.

(c) Associate professional counselors may only use the title “associate professional counselor” and may practice professional counseling only under direction and supervision and only for a period not to exceed five years while obtaining the post-master’s experience required for licensure as a professional counselor. (Code 1981, § 43-7A-11, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 1990, p. 1484, § 3; Ga. L. 1993, p. 330, § 4; Ga. L. 1994, p. 450, § 3; Ga. L. 1997, p. 1387, § 3; Ga. L. 2002, p. 1479, §§ 2, 3.)

43-10A-12. Requirements for licensure in social work; authorized services.

(a) The education, experience, and training requirements for licensure in social work are as follows:

(1) For licensure as a master’s social worker, a master’s degree in social work from a program accredited by the Council on Social Work Education; and

(2) For licensure as a clinical social worker:

(A) A master’s degree in social work from a program accredited by the Council on Social Work Education; and

(B) As defined by the board, three years’ full-time supervised experience in the practice of social work following granting of the master’s degree. Of the three years of supervised experience, only the first two must be under direction. A doctoral degree in a specialty, an allied profession, or child and family development may substitute for one year of such experience. At least one year of experience shall have occurred within two years immediately preceding application for licensure as a clinical social worker or the applicant shall have met the continuing education requirement established by the board for clinical social work during the year immediately preceding application.

(b) Licensed master’s social workers may render or offer to render to individuals, marriages, couples, families, groups, organizations, governmental units, or the general public service which is guided by knowledge of social resources, social systems, and human behavior. They may provide evaluation, prevention, and intervention services which include but are not restricted to community organization, counseling, and supportive services such as administration, direction, supervision of bachelor’s level social workers, consultation, research, or

education. The first two years of their practice after licensure as a master's social worker shall be under direction and supervision. Thereafter, they may engage in private practice, except that those social workers whose practice includes counseling or psychotherapeutic techniques may only engage in such practice under the supervision of a duly qualified supervisor and only for such period of time as is prescribed for qualification to take the clinical social work licensing examination.

(c) Licensed clinical social workers may practice all authorized services of licensed master's social workers and may: provide supervision and direction; provide psychosocial evaluation through data collection and analyses to determine the nature of an individual's mental, cognitive, emotional, behavioral, and interpersonal problems or conditions; provide counseling and psychotherapy to individuals, marriages, couples, families, and groups; interpret the psychosocial dynamics of a situation and recommend and implement a course of action to individuals, marriages, couples, families, or groups in such settings as private practice, family service and counseling agencies, health care facilities, and schools; and provide direct evaluation, casework, social work advocacy, education, training, prevention, and intervention services in situations threatened or affected by social, intrapersonal, or interpersonal stress or health impairment. (Code 1981, § 43-7A-12, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 1987, p. 467, § 1; Ga. L. 1990, p. 1484, §§ 4, 5; Ga. L. 1993, p. 330, § 5.)

JUDICIAL DECISIONS

Cited in *Adams v. State*, 275 Ga. 867, 572 S.E.2d 545 (2002).

43-10A-13. Requirements for licensure in marriage and family therapy.

(a) The education, experience, and training requirements for licensure in marriage and family therapy are as follows:

(1) For licensure as an associate marriage and family therapist, a master's degree in a program in marriage and family therapy or a program including a master's degree and additional post-master's degree course work, both of which programs shall include three courses in marriage and family studies, three courses in marriage and family therapy, three courses in human development, one course in marriage and family therapy ethics, and one course in research, or from any program accredited by the Commission on Accreditation for Marriage and Family Therapy Education, which degree shall have been granted by a recognized educational institution; completion of a one-year practicum in marriage and family therapy under supervision before or after the granting of the master's degree, which

practicum shall include 500 hours of direct clinical experience in marriage and family therapy and 100 hours of supervision of such experience; and registration with the board of an acceptable contract for obtaining the post-master's experience under direction and supervision required for licensure as a marriage and family therapist; and

(2) For licensure as a marriage and family therapist:

(A) Licensure as an associate marriage and family therapist and two years of full-time post-master's experience or its equivalent in the practice of marriage and family therapy under direction and supervision as an associate marriage and family therapist, which shall include a minimum of 2,000 hours of direct clinical experience and 100 hours of supervision of such experience and which shall be completed within a period of not less than two years and not more than five years;

(B) A master's degree from a program in any specialty, any allied profession, applied child and family development, applied sociology, or from any program accredited by the Commission on Accreditation for Marriage and Family Therapy Education, which degree shall have been granted by a recognized educational institution and shall include, as part of the degree program or as additional post-master's degree course work, at least two courses in marriage and family studies, two courses in marriage and family therapy, and, after July 1, 2000, one course in marriage and family therapy ethics; and three years' full-time post-master's experience or its equivalent under direction and supervision in the practice of any specialty, which shall include a minimum of 2,500 hours of direct clinical experience, one year of which may have been in an approved practicum before or after the granting of the master's degree which shall include a minimum of 500 hours of direct clinical experience, and two years of which shall have been in the practice of marriage and family therapy which shall include a minimum of 2,000 hours of direct clinical experience, and 200 hours of supervision of such experience all of which shall be completed within a period of not less than three years and not more than five years; or

(C) A doctorate degree from a program in any specialty, any allied profession, applied child and family development, applied sociology, or from any program accredited by the Commission on Accreditation for Marriage and Family Therapy education, which degree shall have been granted by a recognized educational institution and shall include, as part of a master's or doctoral degree program or as additional postgraduate degree course work, at least two courses in marriage and family studies, two courses in marriage and family therapy, and, after July 1, 2000, one course in

marriage and family therapy ethics; two years' full-time post-master's experience under direction in the practice of marriage and family therapy which shall include a minimum of 1,500 hours of direct clinical experience, one year of which may have been in an approved internship program before or after the granting of the doctoral degree, which shall include a minimum of 500 hours of direct clinical experience, and one year of which shall have been full-time post-master's experience, which shall include a minimum of 1,000 hours of direct clinical experience; and 100 hours of supervision of such experience in the practice of marriage and family therapy, 50 hours of which may have been obtained while a student or intern in an accredited doctoral program.

(b) Persons intending to apply for licensure as a marriage and family therapist and who have completed one of the graduate degrees required for such licensure may register a contract with the board for obtaining the required post-master's experience under direction and supervision.

(c) Associate marriage and family therapists may only use the title "associate marriage and family therapist" and may practice marriage and family therapy only under direction and supervision and only for a period not to exceed five years while obtaining the post-master's experience required for licensure as a marriage and family therapist. (Code 1981, § 43-7A-13, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 1988, p. 580, § 1; Ga. L. 1989, p. 825, § 3; Ga. L. 1994, p. 97, § 43; Ga. L. 1995, p. 874, § 1; Ga. L. 1996, p. 843, § 3; Ga. L. 1997, p. 452, § 2; Ga. L. 2002, p. 415, § 43.)

43-10A-14. Fees.

Application, examination, license, license renewal, and penalty fees shall be established by the board pursuant to Code Section 43-1-7. (Code 1981, § 43-7A-14, enacted by Ga. L. 1984, p. 1406, § 1.)

Administrative rules and regulations. — Fees, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Composite Board of Pro-

fessional Counselors, Social Workers and Marriage and Family Therapists, Chapter 135-2.

43-10A-15. Expiration, renewal, and penalty dates.

Expiration, renewal, and penalty dates for licenses issued under this chapter shall be established pursuant to Code Section 43-1-4. No person whose license has expired shall have such license reinstated without complying with the rules and regulations regarding reinstatement set forth by the board. (Code 1981, § 43-7A-15, enacted by Ga. L. 1984, p. 1406, § 1.)

43-10A-16. Requirements for continuing education.

The board shall establish continuing education requirements for license renewal. The number of hours of continuing education in each specialty shall not exceed the number of hours available that year in each such specialty in board approved courses within the state. The board may waive these continuing education requirements for not more than 12 months, but such waiver shall only be available upon the licensee's satisfactory showing to the board of undue hardship. (Code 1981, § 43-7A-16, enacted by Ga. L. 1984, p. 1406, § 1.)

Administrative rules and regulations. — Continuing education, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Composite

Board of Professional Counselors, Social Workers and Marriage and Family Therapists, Chapter 135-9.

43-10A-17. Denial or revocation of license; other discipline; subpoenas; judicial review; reinstatement; investigation; immunity; failure to appear; voluntary surrender of license; other applicable law.

(a) The board shall have the authority to refuse to grant a license to an applicant therefor or to revoke the license of a person licensed by the board or to discipline a person licensed by the board, upon a finding by a majority of the entire board that the licensee or applicant has:

(1) Failed to demonstrate the qualifications or standards for a license contained in this chapter or rules or regulations promulgated thereunder; it shall be incumbent upon the applicant to demonstrate to the satisfaction of the board that he meets all the requirements for the issuance of a license, and, if the board is not satisfied as to the applicant's qualifications, it may deny a license without a prior hearing; provided, however, that the applicant shall be allowed to appear before the board if he so desires;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of a specialty or on any document connected therewith; or practiced fraud or deceit or intentionally made any false statement in obtaining a license to practice the specialty; or made a false statement or deceptive registration with the board;

(3) Been convicted of any felony or of any crime involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States; as used in this paragraph and paragraph (4) of this subsection, the term "felony" shall include any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere; and, as

used in this paragraph, the term “conviction” shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;

(4) Been arrested, charged, and sentenced for the commission of any felony, or any crime involving moral turpitude, where:

(A) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(B) An adjudication or sentence was otherwise withheld or not entered on the charge except with respect to a plea of nolo contendere.

The plea of nolo contendere or the order entered pursuant to the provisions of Article 3 of Chapter 8 of Title 42, relating to probation of first offenders, or other first offender treatment shall be conclusive evidence of arrest and sentencing for such crime;

(5) Had his license to practice a specialty revoked, suspended, or annulled by any lawful licensing authority other than the board; or had other disciplinary action taken against him by any such lawful licensing authority other than the board; or was denied a license by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings; or was refused the renewal of a license by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings;

(6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or applicant to practice the specialty or is of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of the specialty but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness; unprofessional conduct shall also include any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing practice of the specialty, as well as the practice of any professional activity which the licensee or applicant is not qualified to perform by virtue of not having acquired the requisite professional education, training, or experience;

(7) Knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person or any licensee whose license has been suspended or revoked by the board to practice unlawfully a specialty or to practice outside the scope of any disciplinary limitation placed upon the licensee by the board;

(8) Violated a statute, law, or any rule or regulation of this state, any other state, the board, the United States, or any other lawful

authority (without regard to whether the violation is criminally punishable), which statute, law, or rule or regulation relates to or in part regulates the practice of the specialty, when the licensee or applicant knows or should know that such action is violative of such statute, law, or rule; or violated a lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or license reinstatement;

(9) Been adjudged mentally incompetent by a court of competent jurisdiction within or without this state; any such adjudication shall automatically suspend the license of any such person and shall prevent the reissuance or renewal of any license so suspended for as long as the adjudication of incompetence is in effect; or

(10) Displayed an inability to practice the specialty with reasonable skill and safety to the public or has become unable to practice the specialty with reasonable skill and safety to the public by reason of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material:

(A) In enforcing this subsection, the board may, if it has a reasonable basis to believe that the licensee is practicing while incapacitated in the performance of his or her duties by reason of substance abuse or mental or physical illness, require a licensee or applicant to submit to a mental, physical, or mental and physical examination by an appropriate licensed practitioner designated by the board. The results of such examination shall be admissible in any hearing before the board, notwithstanding any claim of privilege under a contrary rule of law or statute. If a licensee fails to submit to each examination when properly directed to do so by the board, the board may summarily suspend the license of such licensee, if the public health, safety, and welfare imperatively require such action, and thereafter enter a final order upon proper notice, hearing, and proof of such refusal; and

(B) For the purpose of this subsection, the board, if it has a reasonable basis to believe that the licensee is incapacitated in the performance of his or her duties by reason of substance abuse or mental or physical illness, may require the licensee to produce or give the board permission to obtain any and all records relating to the alleged incapacitating mental or physical condition of a licensee or applicant, including that individual's personal psychiatric, psychological, and mental health records; and such records shall be admissible in any hearing before the board. If a licensee fails to provide such records when properly directed to do so by the board, the board may summarily suspend the license of such licensee, if the public health, safety, and welfare imperatively require such action, and thereafter enter a final order upon proper notice, hearing, and proof of such refusal.

(b) The provisions of Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” with respect to emergency action by a professional licensing board and summary suspension of a license are adopted and incorporated by reference into this Code section.

(c) For purposes of this Code section, the board may obtain, through subpoena by the division director, upon reasonable grounds, any and all records relating to the mental or physical condition of a licensee or applicant, and such records shall be admissible in any hearing before the board.

(d) When the board finds that any person is unqualified to be granted a license or finds that any person should be disciplined pursuant to subsection (a) of this Code section or the laws, rules, or regulations relating to a specialty, the board may take any one or more of the following actions:

- (1) Refuse to grant or renew a license to an applicant;
- (2) Administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the licensee;
- (3) Suspend any license for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said license;
- (4) Limit or restrict any license as the board deems necessary for the protection of the public;
- (5) Revoke any license;
- (6) Condition the penalty upon, or withhold formal disposition pending, the applicant’s or licensee’s submission to such care, counseling, or treatment as the board may direct; or
- (7) Impose a fine not to exceed \$500.00 for each violation of a law, rule, or regulation relating to the specialty.

(e) In addition to and in conjunction with the actions described in subsection (d) of this Code section, the board may make a finding adverse to the licensee or applicant but withhold imposition of judgment and penalty; or it may impose the judgment and penalty but suspend enforcement thereof and place the licensee on probation, which probation may be vacated upon noncompliance with such reasonable terms as the board may impose.

(f) Initial judicial review of a final decision of the board shall be had solely in the superior court of the county of domicile of the board.

(g) In its discretion, the board may reinstate a license which has been revoked or issue a license which has been denied or refused, following such procedures as the board may prescribe by rule; and, as a condition

thereof, it may impose any disciplinary or corrective method provided in this Code section.

(h)(1) The division director is vested with the power and authority to make, or cause to be made through employees or agents of the board, such investigations as he or she or the board may deem necessary or proper for the enforcement of the provisions of this chapter. Any person properly conducting an investigation on behalf of the board shall have access to and may examine any writing, document, or other material relating to the fitness of any licensee or applicant. The division director or his or her appointed representative may issue subpoenas to compel such access upon a determination that reasonable grounds exist for the belief that a violation of this chapter may have taken place.

(2) The results of all investigations initiated by the board shall be reported solely to the board, and the records of such investigations shall be kept for the board by the division director, with the board retaining the right to have access at any time to such records. No part of any such records shall be released, except to the board, for any purpose other than a hearing before the board, nor shall such records be subject to subpoena; provided, however, that the board shall be authorized to release such records to another enforcement agency or lawful licensing authority.

(3) If a licensee is the subject of a board inquiry, all records relating to any person who receives services rendered by that licensee in his or her capacity as licensee shall be admissible at any hearing held to determine whether a violation of this chapter has taken place, regardless of any statutory privilege; provided, however, that any documentary evidence relating to a person who received those services shall be reviewed in camera and shall not be disclosed to the public.

(4) The board shall have the authority to exclude all persons during its deliberations on disciplinary proceedings and to discuss any disciplinary matter in private with a licensee or applicant and the legal counsel of that licensee or applicant.

(i) A person, firm, corporation, association, authority, or other entity shall be immune from civil and criminal liability for reporting or investigating the acts or omissions of a licensee or applicant which violate the provisions of this chapter or for initiating or conducting proceedings against such licensee or applicant, if such report is made or action is taken in good faith, without fraud or malice. Any person who testifies or who makes a recommendation to the board in the nature of peer review, in good faith, without fraud or malice, before the board in any proceeding involving the provisions of subsection (a) of this Code

section shall be immune from civil and criminal liability for so testifying.

(j) Neither the issuance of a private reprimand nor the denial of a license by reciprocity nor the denial of a request for reinstatement of a revoked license nor the refusal to issue a previously denied license shall be considered to be a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; notice and hearing within the meaning of said chapter shall not be required, but the applicant or licensee shall be allowed to appear before the board if he so requests.

(k) If any licensee or applicant after reasonable notice fails to appear at any hearing of the board, the board may proceed to hear the evidence against such licensee or applicant and take action as if such licensee or applicant had been present. A notice of hearing, initial or recommended decision, or final decision of the board in a disciplinary proceeding shall be served upon the licensee or applicant by certified mail or statutory overnight delivery, return receipt requested, to the last known address of record with the board. If such material is returned marked "unclaimed" or "refused" or is otherwise undeliverable and if the licensee or applicant cannot, after diligent effort, be located, the division director shall be deemed to be the agent for service for such licensee or applicant for purposes of this Code section, and service upon the division director shall be deemed to be service upon the licensee or applicant.

(l) The voluntary surrender of a license or the failure to renew a license by the end of an established penalty period shall have the same effect as a revocation of said license, subject to reinstatement in the discretion of the board. The board may restore and reissue a license to practice a specialty and, as a condition thereof, may impose any disciplinary sanction provided by this Code section.

(m) This Code section shall apply equally to all licensees or applicants whether individuals, partners, or members of any other incorporated or unincorporated associations, limited liability companies, corporations, or other associations of any kind whatsoever.

(n) Regulation by the board of a specialty shall not exempt licensees under this chapter from regulation pursuant to any other applicable law, including but not limited to Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices Act of 1975." (Code 1981, § 43-7A-17, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 1993, p. 123, § 25; Ga. L. 1993, p. 330, § 6; Ga. L. 1994, p. 97, § 43; Ga. L. 1996, p. 718, § 1; Ga. L. 1999, p. 81, § 43; Ga. L. 2000, p. 1589, § 3; Ga. L. 2000, p. 1706, § 10.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to subsection (k) is applicable with respect to notices delivered on or after July 1, 2000.

Law reviews. — For review of 1996 professions and businesses legislation, see 13 Georgia U.L. Rev. 287 (1996).

43-10A-18. Availability of injunction in enforcement of chapter.

Whenever it shall appear to the board that any person is or has been violating any provisions of this chapter or any of the lawful rules, regulations, or orders of the board, the board, the division director, or the appropriate district attorney may file a petition for injunction in the proper superior court of this state against such person for the purpose of enjoining any such violation. It shall not be necessary to allege or prove that there is no adequate remedy at law. The right of injunction provided for in this Code section shall be in addition to any other legal remedy available, including but not limited to any right of criminal prosecution provided by law. (Code 1981, § 43-7A-18, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 2000, p. 1706, § 19.)

43-10A-19. Obtaining license by fraudulent representation.

It shall be unlawful for a person to obtain or attempt to obtain a license under this chapter by fraudulent representation. (Code 1981, § 43-7A-19, enacted by Ga. L. 1984, p. 1406, § 1.)

43-10A-20. Penalty.

Any person violating Code Section 43-10A-19 or Code Section 43-10A-7 shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$100.00 nor more than \$1,000.00 for each offense and, in addition, may be imprisoned for a term not to exceed 12 months. (Code 1981, § 43-7A-20, enacted by Ga. L. 1984, p. 1406, § 1.)

43-10A-21. Restrictions on use of terms in corporate, partnership, association, or business names.

(a) No corporation, partnership, association, or other business entity may use in its corporate, partnership, association, or business name any term or title restricted under subsection (a) of Code Section 43-10A-7 or the term “professional counseling,” “social work,” or “marriage and family therapy,” or any words, letters, titles, or figures indicating or implying that such entity or any of its employees, officers, or agents are practicing a specialty regulated under this chapter, unless each person practicing a specialty in that entity, except those persons exempt under paragraph (1), (4), (5), (6), (11), (13), or (14) of subsection (b) of Code Section 43-10A-7, is licensed under this chapter.

(b) Any corporation, partnership, association, or other business entity which violates subsection (a) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$500.00 nor more than \$1,000.00 for each offense. (Code 1981, § 43-7A-21, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 1990, p. 1484, § 6; Ga. L. 1993, p. 330, § 7.)

43-10A-22. Restrictions on scope of chapter.

Nothing in this chapter shall be construed to authorize persons licensed under this chapter to practice nursing, occupational therapy, physical therapy, medicine, or psychology, as regulated under Chapters 26, 28, 33, 34, and 39, respectively, of this title nor shall anything in this chapter be construed to limit or regulate the practice of those licensed under said Chapters 26, 28, 33, 34, and 39 of this title, nor shall anything in this chapter be construed to authorize persons licensed under this chapter to perform psychological testing. (Code 1981, § 43-7A-22, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 1987, p. 3, § 43; Ga. L. 1993, p. 330, § 8.)

JUDICIAL DECISIONS

Cited in *Rogers v. State*, 282 Ga. 659, 653 S.E.2d 31 (2007).

43-10A-23. Insurance coverage for specialty practitioners.

Nothing in this chapter shall be construed to mandate insurance coverage or reimbursement for specialty practitioners licensed under this chapter. (Code 1981, § 43-7A-23, enacted by Ga. L. 1984, p. 1406, § 1.)

43-10A-24. Termination.

Repealed by Ga. L. 1992, p. 3137, § 10, effective July 1, 1992.

Editor's notes. — This Code section Ga. L. 1989, p. 825, § 4; and Ga. L. 1990, was based on Ga. L. 1984, p. 1406, § 1; p. 1445, § 1.

CHAPTER 11

DENTISTS, DENTAL HYGIENISTS, AND DENTAL ASSISTANTS

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43-11-81. Direct supervision required.
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Cross references. — Professional corporations generally, T. 14, C. 7.

Administrative rules and regulations. — Organization, Official Compila-

tion of the Rules and Regulations of the State of Georgia, Georgia Board of Dentistry, Chapter 150-1.

JUDICIAL DECISIONS

Cited in *McFarlin v. Taylor*, 187 Ga. App. 54, 369 S.E.2d 330 (1988).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 39 Am. Jur. 2d, Health, §§ 1 et seq., 26 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

Am. Jur. Trials. — Periodontal Malpractice, 89 Am. Jur. Trials 1.

Oral Surgery and Malpractice, 100 Am. Jur. Trials 1.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S.,

Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 39A C.J.S., Health and Environment, §§ 3 et seq., 37 et seq., 48 et seq. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Failure to procure occupational

or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

Constitutionality of statute prescribing conditions of practicing medicine or surgery as affected by question of discrimination against particular school or method, 42 ALR 1342; 54 ALR 600.

Right of corporation or individual, not himself licensed, to practice medicine, surgery, or dentistry through licensed employees, 103 ALR 1240.

Constitutionality, construction, and application of statute relating to dental hygienists, 11 ALR2d 724.

Regulation of prosthetic dentistry, 45 ALR2d 1243.

Liability of doctor or dentist using force to restrain or discipline patient, 89 ALR2d 983.

What constitutes total or permanent disability within the meaning of insurance policy issued to physician or dentist, 21 ALR3d 677.

Criticism or disparagement of physician's or dentist's character, competence, or conduct as defamation, 38 ALR4th 836.

Liability for dental malpractice in provision or fitting of dentures, 77 ALR4th 222.

Liability of orthodontist for malpractice, 81 ALR4th 632.

ARTICLE 1

GENERAL PROVISIONS

43-11-1. Definitions.

As used in this chapter, the term:

(1) "Accredited dental college" and "accredited dental school" or "accredited school of dentistry" means a dental school, college, or university with an education program accredited by the Commission on Dental Accreditation of the American Dental Association or its successor agency.

(2) "Accredited dental hygiene school" means a dental hygiene education program accredited by the Commission on Dental Accreditation of the American Dental Association or its successor agency.

(3) "Advanced dental education program" means an accredited dental advanced specialty education program or accredited dental education program accredited by the Commission on Dental Accreditation of the American Dental Association or its successor agency.

(4) "Board" means the Georgia Board of Dentistry.

(5) "Conscious sedation" means a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and that is produced by a pharmacological or nonpharmacological method or combination thereof. A patient whose only response is reflex withdrawal from repeated painful stimuli shall not be considered to be in a state of conscious sedation. The use of nitrous oxide is not considered conscious sedation for purposes of this chapter.

(6) “Dentistry” means the evaluation, diagnosis, prevention, or treatment, or any combination thereof, whether using surgical or nonsurgical procedures, of diseases, disorders, or conditions, or any combination thereof, of the oral cavity, maxillofacial area, or the adjacent and associated structures, or any combination thereof, and their impact on the human body provided by a dentist, within the scope of his or her education, training, and experience, in accordance with the ethics of the profession and applicable law, including, but not limited to, the acts specified in Code Section 43-11-17.

(7) “General anesthesia” means an induced state of depressed consciousness, or an induced state of unconsciousness, accompanied by partial or complete loss of protective reflexes, including the inability to continually and independently maintain an airway and respond purposefully to physical stimulation or verbal command, and produced by a pharmacological or nonpharmacological method or combination thereof. For purposes of this chapter, “general anesthesia” includes deep sedation.

(8) “Instructor” means either a dentist or a dental hygienist whom the state board has granted a teacher’s or instructor’s license pursuant to Code Section 43-11-42.

(9) “Licensed dental hygienist” means a dental hygienist licensed and in good standing in this state pursuant to this chapter.

(10) “Licensed dentist” means a dentist licensed and in good standing in this state pursuant to this chapter.

(11) “Training clinic” means a clinic operated as a nonprofit facility by an accredited dental college, advanced dental education program, or accredited dental hygiene school primarily to train students or residents of such college, program, or school. (Code 1981, § 43-11-1, enacted by Ga. L. 1987, p. 932, § 1; Ga. L. 1999, p. 234, § 1; Ga. L. 2004, p. 720, § 1; Ga. L. 2008, p. 530, § 1/SB 363.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, punctuation was revised in paragraph (1).

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §§ 6, 13 et seq., 26 et seq., 45, 74 et seq., 121 et seq., 131 et seq.

C.J.S. — 70 C.J.S., Physicians, Sur-

geons, and Other Health-Care Providers, §§ 4 et seq., 52 et seq., 71 et seq.

ALR. — Physicians’ and surgeons’ liens, 39 ALR5th 787.

43-11-2. Creation of and composition of board; qualifications and voting rights of members; terms of office; vacancies; enjoining violations.

(a) A board to be known as the Georgia Board of Dentistry is created. The board shall consist of 11 members to be appointed and commissioned by the Governor as provided in subsection (b) of this Code section.

(b)(1) Nine members of the board shall be dentists and shall be appointed as follows: The members of the board who are dentists serving on July 1, 1981, shall continue to serve out their respective terms of office. As each such member's term of office subsequently expires, the Governor shall appoint a new member who shall be a practicing dentist licensed by this state. The Georgia Dental Association may, at each annual meeting, nominate four reputable practicing dentists for each expired or next expiring board member's term; and, from each group of four dentists so nominated, the Governor may appoint one as the new member of said board.

(2) One member of the board shall be a dental hygienist who is not a dentist, who is a resident of this state, and who is a practicing dental hygienist in this state and shall be appointed by the Governor. No one shall be eligible as a dental hygienist member of the board unless he or she is a citizen of this state and has lawfully practiced as a dental hygienist for five or more years at the time of his or her appointment and is not financially interested in, nor connected with, any dental college or dental hygiene school. If such a member ceases to be a resident of this state or ceases practicing in this state, that position on the board shall be deemed vacated. The Georgia Dental Hygienists Association may nominate four reputable dental hygienists who are not dentists for each expired or expiring term; and, from each group of four dental hygienists so nominated, the Governor may appoint one as the new member of the board.

(3) One member of the board shall be a citizen of this state who is not a dentist or a dental hygienist and shall be appointed by the Governor.

(4) Except as otherwise provided in paragraphs (6) and (7) of this subsection, the term of office of each member of the board shall be for five years and until the appointment and qualification of a successor.

(5) Each vacancy on the board shall be filled by the Governor for the unexpired term in the same manner as the original appointment.

(6) The term of the initial member appointed pursuant to paragraph (2) of this subsection shall be for a term of two years beginning July 1, 1978, and ending June 30, 1980.

(7) The term of the initial member appointed pursuant to paragraph (3) of this subsection shall be for a term of four years beginning July 1, 1978, and ending June 30, 1982.

(c) No one shall be eligible as a dentist member of the board unless he or she is a citizen of this state and has lawfully engaged in the practice of dentistry for five or more years at the time of his or her appointment and is not financially interested in, nor connected with, any dental college.

(d)(1) The dental hygienist member of the board may vote only on matters relating to dental hygiene, administration, and policy which do not directly relate to practical or scientific examination of dentists for licensing in this state.

(2) The citizen member of the board who is not a dentist or dental hygienist may vote only on matters relating to administration and policy which do not directly relate to practical and scientific examination of dentists and dental hygienists for licensing in this state.

(e) The board may bring an action to enjoin any person, firm, partnership, corporation, or other entity who without being licensed or registered to do so by the board engages in or practices the profession of dentistry. The proceeding shall be filed in the county in which such person resides or, in the case of a firm, partnership, corporation, or other entity where the firm, partnership, corporation, or other entity maintains its principal office. Unless it shall be made to appear that such person, firm, partnership, corporation, or other entity so engaging in or practicing dentistry is licensed or registered, the injunction shall be issued, and such person, firm, partnership, corporation, or other entity shall be perpetually enjoined from such activities throughout the state. It shall not be necessary in order to obtain the equitable relief provided in this subsection that the board allege and prove that there is no adequate remedy at law. It is declared that such unlicensed activities as are mentioned in this chapter are a menace and a nuisance dangerous to the public health, safety, and welfare. (Ga. L. 1920, p. 132, § 1; Ga. L. 1921, p. 179, § 1; Code 1933, § 84-702; Ga. L. 1949, p. 1367, § 2; Ga. L. 1956, p. 25, § 1; Ga. L. 1972, p. 815, § 1; Ga. L. 1976, p. 484, § 1; Ga. L. 1978, p. 240, § 1; Ga. L. 1981, p. 610, § 1; Ga. L. 1998, p. 590, § 1; Ga. L. 1999, p. 234, § 2.)

Law reviews. — For comment on *Rogers v. Medical Ass'n*, 244 Ga. 151, 259 S.E.2d 85 (1979), invalidating Georgia statute requiring Governor's appointments to Composite State Board of Medi-

cal Examiners be made solely from nominees submitted by state medical society as an unconstitutional delegation of legislative authority to a private organization, see 29 *Emory L.J.* 1183 (1980).

JUDICIAL DECISIONS

Constitutionality of statute. See *Hortman v. Yarbrough*, 214 Ga. 693, 107 S.E.2d 202 (1959) (see O.C.G.A. § 43-11-2).

This law is a general and not a special law and does not offend Ga. Const. 1945, Art. I, Sec. IV, Para. I (see Ga. Const. 1983, Art. III, Sec. VI, Para. IV). *Hortman v. Yarbrough*, 214 Ga. 693, 107 S.E.2d 202 (1959) (see O.C.G.A. § 43-11-2).

Board's exclusion of black dentists from board's membership as state action. — Legislature, by giving to voluntary associations of dentists the right to nominate members of various state agencies, made the association an agency of the State of Georgia to that extent. By excluding black dentists from the association's membership it thereby deprives black dentists of the right to vote in connection with the nomination of dentists to fill places in the agencies. The result of such action is that only dentists approved by those of the white race can be elected to such offices and black dentists can have no

voice in their selection. This seems to be a clear violation of U.S. Const., amend. 14. *Bell v. Georgia Dental Ass'n*, 231 F. Supp. 299 (N.D. Ga. 1964).

Making dentures, even at cost, constitutes practice of dentistry. — Respondent's testimony admitting that the respondent had performed services for witnesses in making and repairing appliances to be used as teeth, and that the appliances had not been ordered by, or returned to, a licensed dentist, and stating that respondent had not charged a sufficient amount for services to realize any profit over and above material that went into the work, and an amount to take care of overhead expense since the respondent was enjoined in 1957 from practicing dentistry, showed that the respondent had practiced dentistry under definition of the law, and judgment of the trial judge finding the respondent in contempt of court was amply supported by evidence. *Hortman v. Georgia Bd. of Dental Exmrs.*, 214 Ga. 560, 105 S.E.2d 732 (1958).

OPINIONS OF THE ATTORNEY GENERAL

Voting rights of consumer and dental hygienist board members. — Consumer member of the Georgia Board of Dentistry may vote on all matters except those which relate directly to practical and scientific examination for licensing of dental hygienists and dentists; the dental hygienist member may vote on all matters except those which relate directly to practical and scientific examination for licensure of dentists. 1978 Op. Att'y Gen. No. 78-72 (see O.C.G.A. § 43-11-2).

Consumer member for the Georgia Board of Dentistry may vote on any matter coming before the board without restriction; to the extent that the amendment of O.C.G.A. § 43-1-18 in 2000 changed the voting authority of the consumer member, the views expressed in 1978 Op. Att'y Gen. 78-72 are modified. Voting rights of the dental hygienist member are unaffected by the statutory change and remain as expressed in the prior opinion. 2004 Op. Att'y Gen. No. 04-2.

RESEARCH REFERENCES

C.J.S. — 66 C.J.S., Nuisances, §§ 7 et seq., 15, 65, 68, 71, 74, 86, 89, 91, 92, 103, 104, 108.

ALR. — Disqualification, for bias or

interest, of member of occupation or profession sitting in license revocation proceeding, 97 ALR2d 1210.

43-11-3. Election of officers.

The board shall elect from its members a president and such other officers as the board in its discretion may see fit. (Ga. L. 1920, p. 132, § 2; Code 1933, § 84-704; Ga. L. 1976, p. 484, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Duties of joint-secretary under former Code 1933, § 84-702. — While a board has authority under former Code 1933, § 84-704 (see O.C.G.A. § 43-11-3) to elect from the board's members a president and such other officers as the board may see fit, any application filed with or communication addressed to "such other officer" as the board in the board's discre-

tion has seen fit to elect has no legal status since former Code 1933, § 84-702 (see O.C.G.A. § 43-11-2) clearly imposes upon the joint-secretary the duty to bring together and keep records relating to the several boards, to receive all applications for licenses, and to collect all fees required by law. 1963-65 Op. Att'y Gen. p. 182.

43-11-4. Meetings.

It shall be the duty of the board to meet annually at the close of the session of a majority of the dental colleges and to hold such other meetings as the duties of the board may require. It shall also be the duty of the board to meet in any called meeting that may be ordered in writing by not less than three members of the board, or by its president, upon not less than 15 days' notice in writing, stating the time, place, and object of such called meeting. (Ga. L. 1920, p. 132, § 3; Code 1933, § 84-705; Ga. L. 1976, p. 484, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Board meeting without full notice is valid if no rights affected. — When all members of the board convene in a called meeting after notice, even though notice is not for the period of 15 days, and transact any business coming before the

board, and when failure to give 15 days notice does not involve the right of any third person, the meeting is legal and any business transacted in such meeting is in order. 1945-47 Op. Att'y Gen. p. 489.

43-11-5. Duty of members to notify division director of address.

Each member of the board, upon the receipt of his or her commission, shall file with the division director his or her post office address and thereafter a notice of any change therein. Any notice mailed to such address by the division director shall be deemed to comply with the requirements of this chapter as notice to him or her. (Ga. L. 1920, p. 132, § 20; Code 1933, § 84-703; Ga. L. 1976, p. 484, § 1; Ga. L. 1999, p. 234, § 3; Ga. L. 2000, p. 1706, § 19.)

43-11-6. Reimbursement of members.

Each member of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2. (Ga. L. 1920, p. 132, § 22; Ga. L. 1921, p. 179, § 3; Code 1933, § 84-713; Ga. L. 1955, p. 325, § 1; Ga. L. 1958, p. 113, § 1; Ga. L. 1963, p. 273, § 2; Ga. L. 1974, p. 1223, § 2; Ga. L. 1976, p. 484, § 1; Ga. L. 1982, p. 1056, § 2.)

43-11-7. Powers and duties of board.

The board shall perform such duties and possess and exercise such powers, relative to the protection of the public health and the control and regulation of the practice of dentistry as this chapter prescribes and confers upon it. The board shall have the power and authority to promulgate rules and regulations to carry out the performance of its duties as set forth in this chapter. (Code 1933, § 84-704.1, enacted by Ga. L. 1976, p. 484, § 1; Ga. L. 1999, p. 234, § 4.)

OPINIONS OF THE ATTORNEY GENERAL

Board lacks authority to restrict scope of practice of a dentist through the board's rule-making power unless and until the General Assembly grants to the board this power through new legislation. 1976 Op. Att'y Gen. No. U76-54.

43-11-8. Board to examine applicants, issue licenses, make by-laws and rules; seal; books and records.

(a) The board shall exercise the following powers and duties:

(1) Examine all applicants for licenses to practice dentistry who are entitled under this chapter to be so examined and issue licenses to practice dentistry according to this chapter;

(2) Make all necessary bylaws and rules for the governance of the board and the performance of its duties; and

(3) Have and use a common seal bearing the name "Georgia Board of Dentistry."

(b) It shall be the duty of the division director to keep minutes and a record of all the acts of the board and such other books and records as may be necessary to show the acts of the board. (Ga. L. 1920, p. 132, § 4; Code 1933, § 84-707; Ga. L. 1976, p. 484, § 1; Ga. L. 1979, p. 853, § 1; Ga. L. 2000, p. 1706, § 19.)

Administrative rules and regulations. — Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Board of Dentistry, Chapter 150-1 et seq.

43-11-9. Rules and regulations affecting dental hygienists, dental assistants, or other persons.

In order to protect and promote the public health and welfare of the citizens of this state, the board shall prescribe by rule or regulation those acts, services, procedures, and practices which may be performed by dental hygienists, dental assistants, or other persons at the direction of and under the supervision of a licensed dentist and shall impose such requirements and restrictions, including the degree of supervision required, on the performance thereof by such dental hygienists, dental assistants, and other persons as it shall deem necessary and proper. (Code 1933, § 84-702.1, enacted by Ga. L. 1972, p. 843, § 2; Ga. L. 1976, p. 484, § 1.)

43-11-10. Dental specialties.

The board is authorized to provide by rule or regulation for definitions of the several dental specialties. (Code 1933, § 84-733, enacted by Ga. L. 1976, p. 484, § 1.)

Administrative rules and regulations. — Specialities, Official Compilation of the Rules and Regulations of the

State of Georgia, Georgia Board of Dentistry, Chapter 150-11.

43-11-11. Census of practicing dentists and dental hygienists; publication of names.

The board may, from time to time, through its members or other suitable persons, take a census of all practicing dentists and dental hygienists of any locality, city, or county in the state when it may consider it necessary for the purpose of carrying out this chapter; the board may at any time cause the names of all licensed dentists and dental hygienists in any locality, city, or county to be posted or published; and the board is authorized to pay for taking such census and posting or publishing such names. (Ga. L. 1920, p. 132, § 20; Code 1933, § 84-715; Ga. L. 1976, p. 484, § 1; Ga. L. 1999, p. 234, § 5.)

43-11-12. (Effective until January 1, 2013. See note.) Public inspection of board records; copies of records as evidence; certification of copies.

It shall be the duty of the division director to keep at his or her office the minutes of the board, together with all the books and records of the board, which books and records shall, except as provided in subsection (k) of Code Section 43-1-2, be public records open to inspection by the public except on Sundays and legal holidays. A copy of all or any part of any record or book certified by the division director, with the seal of the

board attached, shall be primary evidence in any court; and it shall be the duty of the division director to furnish to any person making application therefor a copy of any part or all of any record or book of the board upon the applicant's paying a fee prescribed by the division director. All of such copies shall be certified by the division director and be under the seal of the board. (Ga. L. 1920, p. 132, § 5; Code 1933, § 84-708; Ga. L. 1976, p. 484, § 1; Ga. L. 1999, p. 234, § 6; Ga. L. 2000, p. 1706, § 19.)

Cross references. — Inspection of public records generally, § 50-18-70 et seq.

Editor's notes. — Code Section

43-11-12 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

43-11-12. (Effective January 1, 2013. See note.) Public inspection of board records.

It shall be the duty of the division director to keep at his or her office the minutes of the board, together with all the books and records of the board, which books and records shall, except as provided in subsection (k) of Code Section 43-1-2, be public records open to inspection by the public except on Sundays and legal holidays. (Ga. L. 1920, p. 132, § 5; Code 1933, § 84-708; Ga. L. 1976, p. 484, § 1; Ga. L. 1999, p. 234, § 6; Ga. L. 2000, p. 1706, § 19; Ga. L. 2011, p. 99, § 67/HB 24.)

The 2011 amendment, effective January 1, 2013, deleted the former last two sentences which read: "A copy of all or any part of any record or book certified by the division director, with the seal of the board attached, shall be primary evidence in any court; and it shall be the duty of the division director to furnish to any person making application therefor a copy of any part or all of any record or book of the board upon the applicant's paying a fee prescribed by the division director. All of such copies shall be certified by the divi-

sion director and be under the seal of the board." See editor's note for applicability.

Editor's notes. — Code Section 43-11-12 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

Ga. L. 2011, p. 99, § 101, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

43-11-13. Service of orders and subpoenas of board; service of notice or process on division director.

(a) It shall be the duty of the several sheriffs, their deputies, and the constables to serve any and all lawful orders and subpoenas of the board. The board may also appoint any other person to serve any decision, order, or subpoena of the board, which person's duty it shall be to execute the same.

(b) All orders and processes of the board shall be signed and attested by the division director in the name of the board with its seal attached;

and any notice or legal process necessary to be served upon the board may be served upon the division director. (Ga. L. 1920, p. 132, §§ 18, 19; Code 1933, §§ 84-719, 84-720; Ga. L. 1976, p. 484, § 1; Ga. L. 1983, p. 1389, § 1; Ga. L. 1999, p. 234, § 7; Ga. L. 2000, p. 1706, § 19.)

JUDICIAL DECISIONS

Service upon joint-secretary is insufficient to obtain appearance of individual board members. — Service upon the joint-secretary of the state examining boards, in reliance upon provisions of former Code 1933, §§ 84-101 and 84-102 (see O.C.G.A. § 43-1-2), is not sufficient to obtain appearance of individual

members of the Georgia Board of Dentistry since the board is itself a legal entity capable of suing and being sued under former Code 1933, § 84-702 (see O.C.G.A. § 43-11-2). *Clark v. Board of Dental Exmrs.*, 240 Ga. 289, 240 S.E.2d 250 (1977).

43-11-14. Enforcement of orders and subpoenas of board; contempt.

The board shall have the power to enforce any and all of its lawful orders or subpoenas; to punish as for a contempt anyone obstructing or violating the same and shall also have the power to conduct any and all hearings before it in an orderly and legal manner; to punish anyone as for a contempt who may attempt to or who shall interfere with or in any manner obstruct such hearing; and may also punish as for a contempt any act of indecorum or discourtesy committed in the presence of the board when in session. The board may fine anyone an amount not exceeding \$100.00 for a contempt and in default of the payment thereof may make application to any superior court having jurisdiction to confine the offender to jail for not more than ten days. (Ga. L. 1920, p. 132, § 17; Code 1933, § 84-718; Ga. L. 1976, p. 484, § 1; Ga. L. 1999, p. 234, § 8.)

43-11-15. Enforcement of chapter.

For the purpose of carrying out this chapter, the board is authorized to enforce this chapter by prosecution or otherwise and to authorize the payment of expenses incurred in prosecuting cases out of the funds collected under this chapter. (Ga. L. 1920, p. 132, § 23; Code 1933, § 84-717; Ga. L. 1976, p. 484, § 1.)

43-11-16. Liability for action of peer review committee or board.

No dentist licensed under this chapter and acting or serving on a peer review committee or board or hospital review committee shall be liable for damages for any action of such board or committee or for any official action taken or recommendation made as a member of such board or

committee. (Code 1933, § 84-714.1, enacted by Ga. L. 1974, p. 532, § 2; Ga. L. 1976, p. 484, § 1.)

Cross references. — Medical peer review groups generally, § 31-7-130 et seq.

RESEARCH REFERENCES

ALR. — Right of voluntary disclosure of review or doctor evaluation processes, 60 privileged proceedings of hospital medical ALR4th 1273.

43-11-17. Acts which constitute the practice of dentistry.

(a) Except as expressly provided in this chapter, any person who performs any of the following procedures, operations, or services shall be regarded as practicing dentistry within the meaning of this chapter:

(1) Operates or performs part of any dental operation of any kind upon the human oral cavity, teeth, gingiva, alveolar process, maxilla, mandible or associated structures, or associated contiguous masticatory structures for the treatment of diseases or lesions of such structures;

(2) Extracts teeth or attempts to correct a malposition thereof;

(3) Fills or crowns a human tooth or teeth;

(4) Does any dental operation whatsoever on the human oral cavity, teeth, gingiva, alveolar process, maxilla, mandible or associated structures, or associated contiguous masticatory structures;

(5) Examines any human oral cavity, teeth, gingiva, alveolar process, maxilla, mandible or associated structures, or associated contiguous masticatory structures or takes an impression thereof for the purpose of diagnosing, treating, or operating upon the same;

(6) Supplies, makes, fits, repairs, adjusts, or relines, directly for or to an ultimate user of the product in the State of Georgia, any appliance, cap, covering, prosthesis, or cosmetic covering, as defined by rules and regulations established by the board, usable on or as human teeth unless such provision, production, fit, repair, adjustment, or reline of such product is ordered by and returned to a licensed dentist or unless such product is used solely for theatrical purposes as defined by rules and regulations established by the board;

(7) Undertakes to do or perform any physical evaluation of a patient in his or her office or in a hospital, clinic, or other medical or dental facility prior to, incident to, and appropriate to the performance of any dental services or oral or maxillofacial surgery;

(8) Diagnoses dental radiographs or makes radiographs except for use by a licensed dentist or a licensed physician; or

(9) By any means whatsoever makes it known, implies, or holds out to the public in any fashion that such person will do any of the operations, procedures, or services set forth in this subsection.

(b) Proof of any one or all of the acts mentioned in this Code section shall constitute prima-facie evidence of the practice of dentistry. (Ga. L. 1920, p. 132, § 6; Code 1933, § 84-701; Ga. L. 1949, p. 1161, § 1; Ga. L. 1976, p. 484, § 1; Ga. L. 1983, p. 1389, § 2; Ga. L. 1987, p. 932, § 2; Ga. L. 1991, p. 450, § 1; Ga. L. 1999, p. 234, § 9; Ga. L. 2004, p. 720, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, in paragraphs (a)(1), (a)(4) and (a)(5), commas

were inserted following “associated structures”.

JUDICIAL DECISIONS

Statute was constitutional and was not violative of constitutional rights under federal or state constitutions. *Clark v. Board of Dental Exmrs.*, 240 Ga. 289, 240 S.E.2d 250 (1977) (see O.C.G.A. § 43-11-17).

Constitutionality of section. — See *Hortman v. Yarbrough*, 214 Ga. 693, 107 S.E.2d 202 (1959) (see O.C.G.A. § 43-11-17).

Provision regarding making or repairing dentures does not offend due process principles. — Portion of O.C.G.A. § 43-11-17 defining making or repairing appliances usable on teeth or as teeth, unless ordered by a licensed dentist as part of the practice of dentistry, does not offend due process of law principles. *Holcomb v. Johnston*, 213 Ga. 249, 98 S.E.2d 561 (1957); *Wrzesinski v. State*, 271 Ga. 659, 522 S.E.2d 461 (1999).

Taking impressions or fitting plates as practice of dentistry. — Taking an impression and fitting a plate made from such impression to the mouth of a particular person, and the doing of the acts necessary therefore, may constitute the practice of dentistry, even though making or preparing a plate may be purely mechanical. *Atlanta S. Dental College v. State*, 51 Ga. App. 379, 180 S.E. 620 (1935).

Accepting cash payment for examining person's mouth and gums and making alginate impression of the sort

customarily made as a necessary preliminary to the manufacture of a permanent denture constituted the practice of dentistry. *West v. State*, 178 Ga. App. 550, 343 S.E.2d 759 (1986).

Charge of any sort for dental work constitutes practice of dentistry. — When one charges a fee or salary or any reward, whether paid or unpaid to anyone directly or indirectly for dental work, such person practices dentistry. *Rivers v. Atlanta S. Dental College*, 187 Ga. 720, 1 S.E.2d 750 (1939).

Respondent's testimony admitting that services were performed for witnesses in making and repairing appliances to be used as teeth, and that the appliances had not been ordered by, or returned to, a licensed dentist, and respondent's statement that respondent had not charged a sufficient amount for services to realize any profit over and above material that went into the work and an amount to take care of the overhead expense since respondent was enjoined in 1957 from practicing dentistry, showed that respondent had practiced dentistry under definition of the law, and judgment of the trial judge finding respondent in contempt of court was amply supported by evidence. *Hortman v. Georgia Bd. of Dental Exmrs.*, 214 Ga. 560, 105 S.E.2d 732 (1958).

Charge for expenses incidental to service constitutes practice of dentistry. — All things incidental to the sev-

eral kinds of service specified in the definition are to be included as overhead or part of the service; when charges are made for one or more of the overhead or incidental services necessary or convenient for operations specifically mentioned in the definition, the performance of such operations and charging therefor will constitute the practice of dentistry within the meaning of the statutory definition. *Rivers v. Atlanta S. Dental College*, 187 Ga. 720, 1 S.E.2d 750 (1939).

Examples of overhead or incidental expenses. — Lights, electric current, water, laundry, obsolescence and depreciation in building and equipment, heat, repairs, printing and stationery, clerks, maids and the like, used by the practitioner in connection with a dental office, are incidental or overhead adjuncts, and inclusion of one or more of these in charges for operations of any of the kinds specified would bring the practice within the statutory definition; this applies whether the statutory definition is considered alone or in connection with former Code 1933, § 84-722 (see O.C.G.A. § 43-11-20). *Rivers v. Atlanta S. Dental College*, 187 Ga. 720, 1 S.E.2d 750 (1939).

After state shows practice without license, burden is on defendant to establish right to practice. — When the state makes out a case by proving that the defendant practiced dentistry without having obtained a license, this proof casts the burden upon the defendant to prove

defendant's right to so practice; the law makes the having of a license or other authority to practice dentistry a matter of defense. *Jordan v. State*, 77 Ga. App. 700, 49 S.E.2d 694 (1948).

Negligence per se in cosmetic procedure. — Dentist's performance of elective cosmetic procedures to a patient's face constituted negligence per se since the dentist exceeded the statutory limits of the scope of dentistry. *Brown v. Belinfante*, 252 Ga. App. 856, 557 S.E.2d 399 (2001).

Dentist's action for declaratory and injunctive relief, seeking to prevent the board of dentistry from taking action against the dentist based on an opinion of the attorney general to the effect that certain procedures being performed by the dentist were not within the lawful scope of the practice of dentistry, was not barred by a failure to exhaust administrative remedies since the only way for the dentist to challenge the board's position was to continue performing the procedures, thereby risking criminal prosecution for the felony offense of practicing medicine without a license and/or the initiation of administrative proceedings to revoke the dentist's license to practice dentistry. *Thomas v. Georgia Bd. of Dentistry*, 197 Ga. App. 589, 398 S.E.2d 730 (1990).

Cited in *Emory Univ. v. Porubiansky*, 248 Ga. 391, 282 S.E.2d 903 (1981); *Thebaut v. Georgia Bd. of Dentistry*, 235 Ga. App. 194, 509 S.E.2d 125 (1998).

OPINIONS OF THE ATTORNEY GENERAL

Dentist may prescribe drugs. — Silence of statute as to authority to prescribe drugs means that the dentist is at the very least authorized to prescribe such drugs as are, at time of prescription, generally accepted as being necessary or incidental to the dentist's practice of dentistry. 1968 Op. Att'y Gen. No. 68-62 (see O.C.G.A. § 43-11-17).

Allowable surgical procedures. — Dentist performing a dental operation may also perform procedures which are necessary or incidental to proper treatment of the patient, provided the procedures are limited to the oral cavity, teeth, gingiva, alveolar process, maxilla, mandi-

ble or associated structures, or contiguous masticatory structures. 1996 Op. Att'y Gen. No. U96-3.

Acts constituting unlicensed practice of medicine. — Performance of osteopathic adjustments of the cranial bones (cranial osteopath) for the treatment of temporomandibular (craniomandibular) disorders is not within the scope of a dental license under Georgia law, and the performance of such practice or procedure by dentists constitutes the unlicensed practice of medicine. 1989 Op. Att'y Gen. No. 89-49.

Performing thermographic studies of the cervical and lumbar spine and extrem-

ities is not within the scope of a dental license under Georgia law, and the performance of such practice or procedure by dentists constitutes the unlicensed practice of medicine. 1989 Op. Att'y Gen. No. 89-49.

Taking and interpreting x-rays to evaluate cervical spine relationships including flexion, extension and anterior-posterior views of the cervical spine is not within the scope of a dental license under Georgia law, and the performance of such practice or procedure by dentists constitutes the unlicensed practice of medicine. 1989 Op. Att'y Gen. No. 89-49.

Application to the neck, shoulders and back of physical therapy modalities such as ultrasound, transcutaneous electrical nerve stimulation ("TENS"), or galvanic stimulation is not within the scope of a dental license under Georgia law, and the performance of such practice or procedure by dentists constitutes the unlicensed

practice of medicine. 1989 Op. Att'y Gen. No. 89-49.

"Trigger-point" intramuscular injections of local anesthetic into any muscle other than the primary muscles of mastication (*i.e.*, temporalis, masseter, and internal and external pterygoids) are not within the scope of a dental license under Georgia law, and the performance of such practice or procedure by dentists constitutes the unlicensed practice of medicine. 1989 Op. Att'y Gen. No. 89-49.

Awarding disability ratings on factors other than those directly relating to jaw function (*i.e.*, mastication (chewing) and deglutition (swallowing)), or to injury to the nerves that directly innervate the mouth, teeth, gums and jaws is not within the scope of a dental license under Georgia law, and the performance of such practice or procedure by dentists constitutes the unlicensed practice of medicine. 1989 Op. Att'y Gen. No. 89-49.

RESEARCH REFERENCES

ALR. — Constitutionality and construction of statutes or regulations prohibiting one who has no license to practice dentistry or medicine from owning, maintaining or operating an office therefor, 20 ALR2d 808.

Liability of dentist to patient, 83 ALR2d 7; 11 ALR4th 748.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

43-11-18. Use of full names of practitioners.

All signs, cards, announcements, advertisements, or methods used to state or imply that dentistry may or will be done by anyone at any place in this state shall be required to list the full name of at least one individual practicing dentistry in such place; provided, however, that the names of all dentists practicing at a location shall be supplied to any person who inquires, and a list containing the names of all dentists practicing at a location shall be posted at the entry of such location. (Ga. L. 1920, p. 132, § 12; Code 1933, § 84-714; Ga. L. 1976, p. 484, § 1; Ga. L. 1991, p. 1056, § 1.)

43-11-19. Compliance with chapter as prerequisite to collection of fees for services.

No person who practices dentistry in this state shall be entitled to collect any fee or reward for his or her services without first complying

with this chapter. (Ga. L. 1920, p. 132, § 22; Code 1933, § 84-721; Ga. L. 1976, p. 484, § 1; Ga. L. 1999, p. 234, § 10.)

JUDICIAL DECISIONS

Cited in *Cobb v. Roush*, 144 Ga. App. 501, 241 S.E.2d 619 (1978).

RESEARCH REFERENCES

ALR. — Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

43-11-20. Training and affiliated sites; clinics; licensure examination.

(a) Nothing in this chapter shall prohibit accredited dental colleges or advanced dental education programs from maintaining on-campus training clinics and affiliated sites for the purpose of educational training of dental students or dental residents approved by the board under the supervision of licensed dentists or instructors; nor shall this chapter prevent licensed dental practitioners of other states and countries from giving clinics before any dental society or association of this state whose objects are the advancement and improvement of dentistry as a science.

(b) Nothing in this chapter shall prevent students of accredited dental colleges or residents in advanced dental education programs in this state from engaging in activities otherwise defined as the practice of dentistry, provided that said students work under the direct supervision and responsibility of a licensed dentist or instructor as a part of a training clinic; nor shall this chapter prevent students of accredited dental hygiene schools in this state from engaging in activities otherwise defined as the practice of dental hygiene, provided that said students work under the direct supervision and responsibility of a licensed dentist or dental hygienist as a part of an on-campus training clinic or at affiliated sites approved by said schools, colleges, or programs and the board for the purpose of educational training. Nothing in this chapter shall prevent said schools or colleges of dentistry or dental hygiene or advanced dental education programs from establishing and collecting charges for services rendered by training students or residents under the supervision of a licensed dentist, licensed dental hygienist, or instructor. These charges shall not exceed charges made by similar dental schools and colleges and advanced dental education programs located within the United States.

(c) Nothing in this chapter shall be construed to prohibit the administration of a board approved clinical licensure examination as a

prerequisite for licensure as a dentist or dental hygienist in this state. Nothing in this chapter shall prevent the conducting of a Georgia clinical licensure examination by a board approved examiner who is licensed as a dentist or dental hygienist in another jurisdiction. Nothing in this chapter shall prevent the taking of a Georgia clinical licensure examination by an individual who is eligible to apply for licensure as a dentist or dental hygienist in this state. (Ga. L. 1920, p. 132, § 27; Code 1933, § 84-722; Ga. L. 1949, p. 1367, § 1; Ga. L. 1976, p. 484, § 1; Ga. L. 1999, p. 234, § 11; Ga. L. 2008, p. 530, § 2/SB 363.)

JUDICIAL DECISIONS

Examples of expenses whose inclusion in charges equals practicing dentistry. — Lights, electric current, water, laundry, obsolescence and depreciation in building and equipment, heat, repairs, printing and stationery, clerks, maids and the like, used by the practitioner in connection with the practitioner's dental office, are incidental or overhead adjuncts, and inclusion of one or more of

these in charges for operations of any of the kinds specified would bring the practice within the statutory definition. This applies whether the statutory definition is considered alone or in connection with this statute. *Rivers v. Atlanta S. Dental College*, 187 Ga. 720, 1 S.E.2d 750 (1939) (see O.C.G.A. § 43-11-20).

Cited in *Emory Univ. v. Porubiansky*, 248 Ga. 391, 282 S.E.2d 903 (1981).

43-11-21. Conscious sedation.

(a) No dentist licensed and practicing in the State of Georgia shall administer either single or multiple pharmacologic agents by oral, parenteral, enteral, transdermal, or transmucosal route that renders a patient to a state of conscious sedation as defined in Code Section 43-11-1, unless such dentist has been issued a permit by the board under the conditions specified therefor in this Code section. The dentist shall ensure that the pharmacologic agents and methods used to administer such agents shall include a margin of safety so that loss of consciousness of the patient is unlikely. This Code section shall not restrict the use of nitrous oxide or pharmacological agents that do not render a patient to a state of conscious sedation. Such permit shall be subject to biennial renewal at the time the dentist is required to renew that dentist's license to practice dentistry. It shall be the responsibility of the dentist to provide such information as the board may require and to pay the separate initial issuance and renewal fees for the permit as may be established by the board.

(b) No dentist shall be issued a permit under this Code section unless the board has received satisfactory evidence that such dentist:

(1) Has received formal training in the use of conscious sedation at an institution accredited by the Commission on Dental Accreditation of the American Dental Association (ADA), its successor agency, or other board approved organization and is certified by such organiza-

tion as competent in the administration of pharmacologic agents for conscious sedation and the handling of emergencies relating to conscious sedation. Such certification shall specify the type, number of hours, and length of training. The minimum didactic hours, patient contact hours, and number of patients sedated under supervision shall be established by rule or regulation of the board;

(2) Utilizes a properly equipped facility for the administration of conscious sedation, including physical plant and equipment, which has been evaluated and certified by an on-site examination; and

(3) Has demonstrated to the satisfaction of the board or any designee thereof proficiency in administering sedative techniques in the dentist's office on a patient or patients in a safe and effective manner.

(c) In enforcing the provisions of this Code section, the board is authorized to designate qualified persons to perform the on-site examinations and is further authorized to provide by rule or regulation for standards for physical plant, equipment, and personnel to be utilized in the induction of conscious sedation.

(d) The board or its appointed designee may, upon reasonable notice, make on-site inspections of the facility, equipment, and personnel of a dentist issued a permit under this Code section to determine if the standards of paragraph (2) of subsection (b) of this Code section are being maintained.

(e)(1) The board may, upon proper application, grant a provisional permit to administer conscious sedation to any dentist who meets the requirements of paragraph (1) of subsection (b) of this Code section.

(2) A provisional permit issued under this subsection shall expire six months after its issuance or upon the board's determination by site visit that the requirements of paragraph (2) or (3) of subsection (b) of this Code section have not been met, whichever occurs earlier. The provisional permit may be renewed once, at the discretion of the board, for a period not to exceed six months following the original expiration date.

(f) A dentist holding a current, valid permit to administer general anesthesia as provided in this chapter shall not be required to obtain a permit under this Code section in order to administer conscious sedation.

(g) A permit issued under this Code section may be revoked or not renewed if the board determines that the dentist holding such permit no longer meets any requirement of subsection (b) of this Code section. The board shall provide notice and opportunity for hearing under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," in

any case in which it revokes or refuses to renew a permit, provided that summary action regarding such permit shall be authorized under Code Section 50-13-18.

(h)(1) This Code section shall not prohibit a person who is duly licensed to practice medicine in this state and who is a member of the anesthesiology staff of an institution classified as a hospital and issued a permit as an institution under Code Section 31-7-1 from administering conscious sedation in a dental facility, except that such anesthesiologist shall remain on the premises of the dental facility until any patient given conscious sedation by such anesthesiologist is stabilized and has regained consciousness.

(2) This Code section shall not prohibit a person who is duly licensed as a certified registered nurse anesthetist in this state from administering conscious sedation in a dental facility, provided that such sedation is administered under the direction and responsibility of a dentist duly permitted under this Code section and that such nurse anesthetist shall remain on the premises of the dental facility until any patient given conscious sedation by such nurse anesthetist is stabilized and has regained consciousness. (Code 1981, § 43-11-21, enacted by Ga. L. 1987, p. 932, § 3; Ga. L. 1994, p. 97, § 43; Ga. L. 1998, p. 179, § 1; Ga. L. 2004, p. 720, § 3.)

Cross references. — Certified registered nurse anesthetists, § 43-26-11.1.

Editor's notes. — Ga. L. 1987, p. 932, § 3, effective July 1, 1987, repealed the former Code section and enacted the current Code section. The former Code section, concerning general anesthesia, was based on Ga. L. 1981, p. 726, § 1. For

present provisions concerning general anesthesia, see Code Section 43-11-21.1.

Administrative rules and regulations. — Sedation permits, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Dentists, Chapter 150-13.

RESEARCH REFERENCES

Am. Jur. Trials. — Anesthesiology Malpractice Litigation, 70 Am. Jur. Trials 101.

43-11-21.1. General anesthesia.

(a) No dentist shall administer general anesthesia on an outpatient basis unless such dentist has been issued a permit by the board under the conditions specified in this Code section. Such permit shall be subject to biennial renewal at the time the dentist is required to renew his or her license to practice dentistry. It shall be the responsibility of the dentist to provide such information as the board may require and to pay the separate initial issuance and renewal fees for the permit as may be established by the board.

(b) No dentist shall be issued a permit under this Code section nor have such permit renewed unless the board has received satisfactory evidence that such dentist:

(1)(A) Has successfully completed a minimum of one year of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level at an institution accredited by the Commission on Dental Accreditation of the American Dental Association, the Joint Commission on Accreditation of Hospitals, or their respective successor agencies; or

(B) Is a diplomate of the American Board of Oral and Maxillofacial Surgery, is a member of the American Association of Oral and Maxillofacial Surgeons, or is a fellow of the American Dental Society of Anesthesiology;

(2) Utilizes a properly equipped facility for the administration of general anesthesia, including physical plant and equipment which has been evaluated and certified by an on-site examination; and

(3) Has demonstrated to the satisfaction of the board or any designee thereof proficiency in administering general anesthesia on a patient or patients in the dentist's office in a safe and effective manner.

(c) In enforcing the provisions of this Code section, the board is authorized to designate qualified persons to perform the on-site examination and is further authorized to provide by rule or regulation for standards for physical plant, equipment, and personnel to be utilized in the administration of general anesthesia.

(d)(1) This Code section shall not prohibit a person who is duly licensed to practice medicine in this state and who is a member of the anesthesiology staff of an institution classified as a hospital and issued a permit as an institution under Code Section 31-7-1 from administering general anesthesia in a dental facility, except that such anesthesiologist shall remain on the premises of the dental facility until any patient given a general anesthetic by such anesthesiologist is stabilized and has regained consciousness.

(2) This Code section shall not prohibit a person who is duly licensed as a certified registered nurse anesthetist in this state from administering general anesthesia in a dental facility, provided that such anesthesia is administered under the direction and responsibility of a dentist duly permitted under this Code section and that such nurse anesthetist shall remain on the premises of the dental facility until any patient given a general anesthetic by such nurse anesthetist is stabilized and has regained consciousness.

(e) The board or its authorized designee may, upon reasonable notice, conduct an on-site inspection of the facility, equipment, and personnel

of a dentist issued a permit under this Code section to determine if the standards of paragraph (2) of subsection (b) of this Code section are being maintained.

(f) The board may, upon proper application, grant a provisional permit to any dentist who meets the requirements of subparagraph (b)(1)(A) or (b)(1)(B) of this Code section, but such permit shall expire six months after its issuance or upon the board's determination by site visit that the requirements of paragraph (2) or (3) of subsection (b) of this Code section have not been met, whichever occurs earlier. The provisional permit may be renewed once, at the discretion of the board, for a period not to exceed six months following the original expiration date.

(g) A permit issued under this Code section may be revoked or not renewed if the board determines that the dentist holding such permit no longer meets any requirement of subsection (b) of this Code section. The board shall provide notice and opportunity for hearing under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," in any case in which it revokes or refuses to renew a permit, provided that summary action regarding such permit shall be authorized under Code Section 50-13-18. (Code 1981, § 43-11-21.1, enacted by Ga. L. 1987, p. 932, § 3; Ga. L. 1999, p. 234, § 12.)

43-11-21.2. Report of morbidity or mortality.

(a) All dentists licensed to practice in Georgia shall submit a complete report to the board of any morbidity or mortality occurring in the course of such dentist's practice or other injury which results in temporary or permanent physical injury requiring any period of hospitalization. This report shall be filed with the board no later than 30 days following such incident and shall contain such information as the board shall deem necessary to investigate the circumstances of the incident.

(b) Any report received by the board pursuant to this Code section shall be subject to the limitations on disclosure set forth in paragraph (2) of subsection (h) of Code Section 43-11-47. (Code 1981, § 43-11-21.2, enacted by Ga. L. 1987, p. 932, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1987, "board" was substituted for "Georgia Board of Dentistry" in the first sentence of subsection (a).

43-11-22. Exceptions to application of chapter.

This chapter shall not apply to physicians licensed in this state in extracting teeth or performing surgical operations. This chapter also shall not apply to any person who extracts any exfoliating deciduous

teeth. (Ga. L. 1920, p. 132, § 28; Code 1933, § 84-723; Ga. L. 1976, p. 484, § 1; Ga. L. 1987, p. 932, § 4; Ga. L. 1999, p. 234, § 13.)

RESEARCH REFERENCES

ALR. — Dentist as a physician or surgeon within statutes, 115 ALR 261.

43-11-23. Termination.

Repealed by Ga. L. 1992, p. 3137, § 11, effective July 1, 1992.

Editor's notes. — This Code section Ga. L. 1983, p. 3, § 32; and Ga. L. 1988, p. was based on Ga. L. 1982, p. 1056, §§ 1, 3; 530, § 3.

ARTICLE 2

LICENSES FOR THE PRACTICE OF DENTISTRY

43-11-40. Qualification of applicants; criminal background check.

(a)(1) Applicants for a license to practice dentistry must have received a doctor of dental surgery (D.D.S.) degree or a doctor of dental medicine (D.M.D.) degree from a dental school approved by the board and accredited by the Commission on Dental Accreditation of the American Dental Association (ADA) or its successor agency, if any. Those applicants who have received a doctoral degree in dentistry from a dental school not so accredited must comply with the following requirements in order to submit an application for licensure:

(A) Successful completion at an accredited dental school approved by the board of the last two years of a program leading to the doctor of dental surgery (D.D.S.) or doctor of dental medicine (D.M.D.) degree; and

(B) Certification by the dean of the accredited dental school where such supplementary program was taken that the candidate has achieved the same level of didactic and clinical competency as expected of a graduate of the school receiving a doctor of dental surgery (D.D.S.) or doctor of dental medicine (D.M.D.) degree.

(2) The board may establish by rule or regulation the requirements for documentation of an applicant's educational and personal qualifications for licensure.

(3) In order to be granted a license under this Code section, all applicants must pass a clinical examination approved by the board and a jurisprudence examination on the laws of this state and rules and regulations as they relate to the practice of dentistry as estab-

- lished or approved by the board, which shall be administered in the English language.
- (b) All applications to the board for a license shall be made through the division director, who shall then submit all such applications to the board.

(c) Subject to the provisions of subsection (a) of Code Section 43-11-47, applicants who have met the requirements of this Code section shall be granted licenses to practice dentistry.

(d) Application for a license under this Code section shall constitute consent for performance of a criminal background check. Each applicant who submits an application to the board for licensure agrees to provide the board with any and all information necessary to run a criminal background check, including but not limited to classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of a background check. (Ga. L. 1920, p. 132, § 7; Code 1933, § 84-709; Ga. L. 1949, p. 1367, § 4; Ga. L. 1963, p. 273, § 1; Ga. L. 1972, p. 843, § 1; Ga. L. 1976, p. 484, § 1; Ga. L. 1982, p. 1056, § 4; Ga. L. 1987, p. 932, § 5; Ga. L. 2000, p. 1706, § 19; Ga. L. 2004, p. 720, § 4.)

Administrative rules and regulations. — License requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Dentistry, Chapter 150-3.

RESEARCH REFERENCES

ALR. — Judicial review of decision upon application for license to practice within state by physician or surgeon from another state or country, 136 ALR 742. Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

43-11-41. Application for provisional license to practice dentistry by credentials; procedure; criminal background check; expiration and revocation of license.

(a)(1) Applicants for a provisional license to practice dentistry by credentials must have received a doctor of dental surgery (D.D.S.) degree or a doctor of dental medicine (D.M.D.) degree from a dental school approved by the board and accredited by the Commission on Dental Accreditation of the American Dental Association (ADA) or its successor agency, if any. Applicants must have been in full-time clinical practice, as defined by rules and regulations established by the board; full-time faculty, as defined by board rule and regulation; or a combination of both for the five years immediately preceding the date of the application and must hold an active dental license in good standing from another state. Those applicants who have received a

doctoral degree in dentistry from a dental school not so accredited must comply with the following requirements in order to submit an application for provisional licensure by credentials:

(A) Successful completion at an accredited dental school approved by the board of the last two years of a program leading to the doctor of dental surgery (D.D.S.) or doctor of dental medicine (D.M.D.) degree; and

(B) Certification by the dean of the accredited dental school where such supplementary program was taken that the candidate has achieved the same level of didactic and clinical competency as expected of a graduate of the school.

(2) The board may establish by rule or regulation the requirements for documentation of an applicant's educational and personal qualifications for provisional licensure.

(3) In order to be granted a provisional license under this Code section, all applicants must have passed a clinical examination given by a state or regional testing agency approved by the board and a jurisprudence examination on the laws of this state and rules and regulations as they relate to the practice of dentistry as established or approved by the board, which shall be administered in the English language.

(4) The board may establish additional licensure requirements by rule and regulation.

(b) All applications to the board for a provisional license by credentials shall be made through the division director, who shall then submit all such applications to the board. The fee for provisional licensure by credentials shall be paid to the division director and shall be in an amount established by the board.

(c) Subject to the provisions of subsection (a) of Code Section 43-11-47, an applicant who has met the requirements of this Code section shall be granted a provisional license to practice dentistry, which shall be valid for two years from the date it is issued and may be renewed subject to the approval of the board.

(d) Application for a provisional license under this Code section shall constitute consent for performance of a criminal background check. Each applicant who submits an application to the board for provisional licensure agrees to provide the board with any and all information necessary to run a criminal background check, including but not limited to classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of a background check.

(e) Upon receipt of license, the applicant by credentials must establish active practice, as defined by rules and regulations of the board, in

this state within two years of receiving such license under this Code section or the license shall be automatically revoked. (Code 1981, § 43-11-41, enacted by Ga. L. 2004, p. 720, § 5; Ga. L. 2005, p. 60, § 43/HB 95.)

Editor's notes. — Former O.C.G.A. 1976, p. 484, § 1 and was repealed by Ga. § 43-11-41 was based on Ga. L. 1967, p. L. 1982, p. 1056, § 5 effective November 417, § 1; Ga. L. 1974, p. 1223, § 4; Ga. L. 1, 1982.

43-11-42. Reciprocity; criminal background check.

(a) The board may issue, in its discretion, without examination, a teacher's or instructor's license to a dental hygienist who has graduated from a school or college approved by the board and accredited by the Commission on Dental Accreditation of the American Dental Association (ADA) or its successor agency, if any, for the sole purpose of teaching or instructing, in an accredited dental hygiene school in this state, those procedures and services recognized in this state to be within the scope of practice of such person's professional license.

(a.1)(1) The board may issue, in its discretion, without examination, a teacher's or instructor's license to a dentist who has graduated from a school, college, or advanced dental education program approved by the board and accredited by the Commission on Dental Accreditation of the American Dental Association (ADA) or its successor agency, if any, for the sole purpose of teaching or instructing, in an accredited dental college, advanced dental education program, or training clinic in this state, those procedures and services recognized in this state to be within the scope of practice of such person's professional license. Those applicants who have received a doctoral degree in dentistry from a dental school not so accredited must comply with the following requirements in order to submit an application for licensure:

(A)(i) Successful completion at an accredited dental school approved by the board of the last two years of a program leading to the doctor of dental surgery (D.D.S.) or doctor of dental medicine (D.M.D.) degree; or

(ii) Successful completion at an accredited dental school or college approved by the board of at least a two-year advanced education program in one of the dental specialties recognized by the American Dental Association (ADA) or in an advanced dental education program in general dentistry; or

(iii) Successful completion of at least two one-year advanced dental education programs in general dentistry at an accredited dental school or college approved by the board; or

(iv) Successful completion of a one-year program in operative dentistry at a dental school or college approved by the board and

a one-year advanced dental education program in general dentistry at an accredited dental school or college approved by the board; and

(B) Certification by the dean of the accredited dental school where such supplementary program was taken that the candidate has achieved the same level of didactic and clinical competency as expected of a graduate of the school receiving a doctor of dental surgery (D.D.S.) or doctor of dental medicine (D.M.D.) degree.

(2) The board may establish by rule or regulation the requirements for documentation of an applicant's educational and personal qualifications for licensure.

(3) In order to be granted a license under this subsection, all applicants must pass a jurisprudence examination on the laws of this state and rules and regulations as they relate to the practice of dentistry as established or approved by the board, which shall be administered in the English language.

(b) The board may issue, in its discretion, without examination, a license to dentists for the sole purpose of practicing public health dentistry in an official state or a local health department or to render dental services to patients in state operated eleemosynary or correctional institutions, provided that these dentists possess a license in another state, are in good standing in said state, and have graduated from an accredited dental college. Such license shall be considered to be a temporary license which shall be valid for a period to be established by board rule.

(c) The cost of such teacher's, instructor's, or temporary public health license shall be established by the board.

(d) Any license issued or considered for issuance under this Code section shall be subject to the provisions set forth in Code Section 43-11-47.

(e) Application for a license under this Code section shall constitute consent for performance of a criminal background check. Each applicant who submits an application to the board for licensure agrees to provide the board with any and all information necessary to run a criminal background check, including but not limited to classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of a background check. (Ga. L. 1920, p. 132, § 8; Code 1933, § 84-710; Ga. L. 1949, p. 1367, § 3; Ga. L. 1956, p. 372, § 1; Ga. L. 1976, p. 484, § 1; Ga. L. 1983, p. 1389, § 3; Ga. L. 1996, p. 226, § 1; Ga. L. 1999, p. 234, § 14; Ga. L. 2002, p. 415, § 43; Ga. L. 2004, p. 720, § 6; Ga. L. 2008, p. 530, § 3/SB 363.)

Cross references. — Cooperation between Georgia and other states generally, T. 28, C. 6.

RESEARCH REFERENCES

ALR. — Judicial review of decision within state by physician or surgeon from upon application for license to practice another state or country, 136 ALR 742.

43-11-43. Fees.

Each person applying for examination for a license to practice dentistry shall, at the time of making his or her application, pay to the division director a fee to be set by the board. Each person applying for the renewal of a license or authority to practice dentistry or for the establishment of a license or authority that has been lost shall, at the time of making his or her application, pay to the division director a fee to be set by the board. Such fee shall cover the entire service for granting or issuing licenses to practice dentistry. (Ga. L. 1920, p. 132, § 22; Ga. L. 1921, p. 179, § 3; Code 1933, § 84-713; Ga. L. 1955, p. 325, § 1; Ga. L. 1958, p. 113, § 1; Ga. L. 1963, p. 273, § 2; Ga. L. 1974, p. 1223, § 2; Ga. L. 1976, p. 484, § 1; Ga. L. 1999, p. 234, § 15; Ga. L. 2000, p. 1706, § 19.)

43-11-44. Discretionary decisions involving treatment of patients.

It is a matter of public interest that all decisions involving or affecting the clinical dental treatment of a patient shall be left to the sole discretion of the licensed dentist providing treatment to the patient. The board shall be authorized to promulgate rules and regulations to supplement and ensure compliance with the requirements of this Code section. (Code 1981, § 43-11-44, enacted by Ga. L. 1999, p. 234, § 16.)

Editor's notes. — The original version of this Code section was based on Ga. L. 1920, p. 132, § 9; Ga. L. 1921, p. 179, § 2; Code 1933, § 84-711; Ga. L. 1976, p. 484, § 1. Subsequently, a new Code section was enacted, concerning registration of licenses, that was then repealed by Ga. L. 1983, p. 1389, § 4.

43-11-45. Registration certificates.

Reserved. Repealed by Ga. L. 1983, p. 1389, § 5, effective March 29, 1983.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, the designation of this Code section was reserved. § 1. Subsequently, a new Code section was enacted, concerning registration of licenses, that was then repealed by Ga. L. 1983, p. 1389, § 4.

Editor's notes. — This Code section

43-11-45.1. Display of license.

Every person licensed under this article shall display such license in a conspicuous place in such person's principal place of business. (Code 1981, § 43-11-45.1, enacted by Ga. L. 1982, p. 1056, § 6.)

43-11-46. Renewal of registration; cardiopulmonary resuscitation qualification.

(a) Every person licensed by the board to practice dentistry shall register biennially on the renewal date set by the division director and shall pay to the division director a registration fee which shall be set by the board. The board shall provide for penalty fees for late registration.

(b) The failure to renew a license by the end of an established penalty period shall have the same effect as a revocation of said license, subject to reinstatement only in the discretion of the board. The board may restore and reissue a license to practice dentistry pursuant to this chapter under any terms or conditions that it may deem appropriate.

(c) After 1988, as a prerequisite for license renewal, dentists shall furnish satisfactory evidence of current certification in cardiopulmonary resuscitation as may be defined by rule or regulation of the board. (Ga. L. 1920, p. 132, § 9; Ga. L. 1921, p. 179, § 2; Code 1933, § 84-711; Ga. L. 1937, p. 627, § 2; Ga. L. 1958, p. 25, § 1; Ga. L. 1963, p. 273, § 3; Ga. L. 1974, p. 1223, § 3; Code 1933, § 84-725, enacted by Ga. L. 1976, p. 484, § 1; Ga. L. 1987, p. 932, § 6; Ga. L. 1996, p. 226, § 2; Ga. L. 2000, p. 1706, § 19.)

43-11-46.1. Continuing education requirement; waiver.

(a) The board shall be authorized to require persons seeking renewal of a dental license under this chapter to complete board approved continuing education of not less than 40 hours biennially. The board shall be authorized to approve courses offered by institutions of higher learning, specialty societies, or professional organizations and to designate the number of hours required and the category in which those hours should be earned.

(b) The board shall be authorized to waive the continuing education requirement in cases of hardship, disability, or illness or under such other circumstances as the board deems appropriate.

(c) The board shall be authorized to promulgate rules and regulations to implement and ensure compliance with the requirements of this Code section.

(d) This Code section shall apply to each licensing, certification, and renewal cycle which begins after the 1990-1991 renewal. (Code 1981, § 43-11-46.1, enacted by Ga. L. 1991, p. 350, § 1.)

43-11-47. Refusal to grant, or revocation of, licenses; disciplining licensees; subpoenas; judicial review; investigations; immunity; failure to appear; voluntary surrender.

(a) The board shall have the authority to refuse to grant a license to an applicant or to revoke the license of a dentist licensed by the board or to discipline a dentist licensed under this chapter or any antecedent law upon a finding by a majority of the entire board that the licensee or applicant has:

(1) Failed to demonstrate the qualifications or standards for a license contained in this chapter or in the rules and regulations issued by the board, pursuant to specific statutory authority; it shall be incumbent upon the applicant to demonstrate to the satisfaction of the board that he or she meets all the requirements for the issuance of a license, and, if the board is not satisfied as to the applicant's qualifications, it may deny a license without a prior hearing; provided, however, that the applicant shall be allowed to appear before the board if he or she so desires;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of dentistry or on any document connected therewith; or practiced fraud or deceit or intentionally made any false statement in obtaining a license to practice dentistry; or made a false statement or deceptive annual registration with the board;

(3) Been convicted of any felony or of any crime involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States; as used in this subsection, the term "felony" shall include any offense which, if committed in this state, would be deemed a felony without regard to its designation elsewhere; and, as used in this subsection, the term "conviction" shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;

(4) Been arrested, charged, and sentenced for the commission of any felony, or any crime involving moral turpitude, where:

(A) A plea of nolo contendere was entered to the charge;

(B) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(C) An adjudication or sentence was otherwise withheld or not entered on the charge.

The plea of nolo contendere or the order entered pursuant to the provisions of Article 3 of Chapter 8 of Title 42 or other first offender

treatment shall be conclusive evidence of arrest and sentencing for such crime;

(5) Had his or her license to practice dentistry revoked, suspended, or annulled by any lawful licensing dental authority other than the board; or had other disciplinary action taken against him or her by any lawful licensing dental authority other than the board; or was denied a license by any lawful licensing dental authority other than the board, pursuant to disciplinary proceedings; or was refused the renewal of a license by any lawful licensing dental authority other than the board, pursuant to disciplinary proceedings;

(6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or applicant to practice dentistry, or of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of dentistry but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness; unprofessional conduct shall also include any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing dental practice;

(7)(A) Engaged in the practice of dentistry as an employee of any individual not licensed to practice dentistry in this state or engaged in the practice of dentistry as an officer or employee of any corporation other than one organized and existing pursuant to Chapter 10 of Title 14, "The Georgia Professional Association Act," or Chapter 7 of Title 14, the "Georgia Professional Corporation Act," or engaged in the practice of dentistry as an employee, manager, or member of any limited liability company organized and existing pursuant to Chapter 11 of Title 14 or a limited liability partnership pursuant to Chapter 8 of Title 14 other than one in which all members are licensed dentists and all professional services and professional judgment decisions are delivered by and made by licensed dentists, except as a licensed dentist or an intern or resident of a hospital or teaching institution licensed by this state.

(B) Possession of an ownership interest of a deceased licensed dentist in a limited liability company which is wholly owned by licensed dentists as described in subparagraph (A) of this paragraph shall not constitute a violation of that subparagraph if that interest is transferred to another licensed dentist member or redeemed by the limited liability company within six months after the date of death of that licensed dentist member;

(8) Reserved;

(9) Knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person or any licensee whose license has been suspended or revoked by the board to practice dentistry or to practice outside the scope of any disciplinary limitation placed upon the licensee by the board;

(10) Violated a statute, law, or any rule or regulation of this state, any other state, the board, the United States, or any other lawful authority (without regard to whether the violation is criminally punishable), which statute, law, or rule or regulation relates to or in part regulates the practice of dentistry, when the licensee or applicant knows or should know that such action is violative of such statute, law, or rule; or violated a lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or license reinstatement;

(11) Been adjudged mentally incompetent by a court of competent jurisdiction within or outside this state; any such adjudication shall automatically suspend the license of any such person and shall prevent the reissuance or renewal of any license so suspended for as long as the adjudication of incompetence is in effect;

(12) Displayed an inability to practice dentistry with reasonable skill and safety to patients or has become unable to practice dentistry with reasonable skill and safety to patients by reason of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition, or by reason of displaying habitual intoxication, addiction to, or recurrent personal misuse of alcohol, drugs, narcotics, chemicals, or any other type of similar substances. In enforcing this paragraph, the board may, upon reasonable grounds, require a licensee or applicant to submit to a mental or physical examination by physicians designated by the board. The results of such examination shall be admissible in any hearing before the board, notwithstanding any claim of privilege under a contrary rule of law or statute. Every person who shall accept the privilege of practicing dentistry in this state, or shall file an application for a license to practice dentistry in this state, shall be deemed to have given that person's consent to submit to such mental or physical examination and to have waived all objections to the admissibility of the results in any hearing before the board upon the grounds that the same constitutes a privileged communication. If a licensee or applicant fails to submit to such an examination when properly directed to do so by the board, unless such failure is due to circumstances beyond his or her control, the board may enter a final order upon proper notice, hearing, and proof of such refusal. Any licensee or applicant who is prohibited from practicing dentistry under this paragraph shall at reasonable intervals be afforded an

opportunity to demonstrate to the board that such person can resume or begin the practice of dentistry with reasonable skill and safety to patients;

(13) Reserved;

(14) Engaged in the excessive prescribing or administering of drugs or treatment or the use of diagnostic procedures which are detrimental to the patient as determined by the customary practice and standards of the local community of licensees; or knowingly prescribed controlled drug substances or any other medication without a legitimate dental purpose; or knowingly overprescribed controlled drug substances or other medication, in light of the condition of the patient at the time of prescription; or

(15) Knowingly made any fraudulent, misleading, or deceptive statement in any form of advertising or made any statement in any advertisement concerning the quality of the dental services rendered by that dentist or any dentist associated with him or her. For purposes of this paragraph, "advertising" shall include any information communicated in a manner designed to attract public attention to the practice of the licensee.

(b) The provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," with respect to emergency action by the board and summary suspension of a license are adopted and incorporated by reference into this chapter.

(c) For purposes of this Code section, the board may obtain, and is authorized to subpoena, upon reasonable grounds, any and all records relating to the mental or physical condition of a licensee or applicant, and such records shall be admissible in any hearing before the board.

(d) When the board finds that any person is unqualified to be granted a license or finds that any person should be disciplined pursuant to subsection (a) of this Code section, the board may take any one or more of the following actions:

(1) Refuse to grant or renew a license to an applicant;

(2) Administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the licensee;

(3) Suspend any license for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said license;

(4) Limit or restrict any license as the board deems necessary for the protection of the public;

(5) Revoke any license; or

(6) Condition the penalty upon, or withhold formal disposition pending, the applicant's or licensee's submission to such care, counseling, or treatment as the board may direct.

(e) In addition to and in conjunction with the actions described in subsection (d) of this Code section, the board may make a finding adverse to the licensee or applicant but withhold imposition of judgment and penalty; or it may impose the judgment and penalty but suspend enforcement thereof and place the licensee on probation, which probation may be vacated upon noncompliance with such reasonable terms as the board may impose.

(f) Initial judicial review of a final decision of the board shall be had solely in the superior court of the county of domicile of the board.

(g) In its discretion, the board may reinstate a license which has been revoked or issue a license which has been denied or refused, following such procedures as the board may prescribe by rule; and, as a condition thereof, it may impose any disciplinary or corrective method provided in this chapter.

(h)(1) The division director is vested with the power and authority to make, or cause to be made through employees or agents of the board, such investigations as he or she or the board may deem necessary or proper for the enforcement of the provisions of this chapter. Any person properly conducting an investigation on behalf of the board shall have access to and may examine any writing, document, or other material relating to the fitness of any licensee or applicant. The division director or his or her appointed representative may issue subpoenas to compel such access upon a determination that reasonable grounds exist for the belief that a violation of this chapter or any other law relating to the practice of dentistry may have taken place. Upon approval of the board, any person properly conducting an investigation on behalf of the board shall have access to and shall have the right to examine the physical premises of a dental practice.

(2) The results of all investigations initiated by the board shall be reported solely to the board, and the records of such investigations shall be kept for the board by the division director, with the board retaining the right to have access at any time to such records. No part of any such records shall be released, except to the board, for any purpose other than a hearing before the board, nor shall such records be subject to subpoena; provided, however, that the board shall be authorized to release such records to another enforcement agency or lawful licensing authority.

(3) All records relating to any patient of a licensee who is the subject of a board inquiry shall be admissible at any hearing held to determine whether a violation of this chapter has taken place,

regardless of any statutory privilege; provided, however, that any documentary evidence relating to a patient shall be reviewed in camera and shall not be disclosed to the public.

(4) The board shall have the authority to exclude all persons during its deliberations on disciplinary proceedings and to discuss any disciplinary matter in private with a licensee or applicant and the legal counsel of that licensee or applicant.

(i) A person, firm, corporation, association, authority, or other entity shall be immune from civil and criminal liability for reporting or investigating the acts or omissions of a licensee or applicant which violate the provisions of subsection (a) of this Code section or any other provision of law relating to a licensee's or applicant's fitness to practice as a dentist, dental hygienist, or dental assistant or for initiating or conducting proceedings against such licensee or applicant, if such report is made or action is taken in good faith, without fraud or malice. Any person who testifies or who makes a recommendation to the board in the nature of peer review, in good faith, without fraud or malice, before the board in any proceeding involving the provisions of subsection (a) of this Code section or any other law relating to a licensee's or applicant's fitness to practice as a dentist or a dental hygienist shall be immune from civil and criminal liability for so testifying.

(j) Neither a denial of a license on grounds other than those enumerated in subsection (a) of this Code section nor the issuance of a private reprimand nor the denial of a license by reciprocity nor the denial of a request for reinstatement of a revoked license nor the refusal to issue a previously denied license shall be considered to be a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; notice and hearing within the meaning of Chapter 13 of Title 50 shall not be required, but the applicant or licensee shall be allowed to appear before the board if he or she so requests.

(k) If any licensee or applicant fails to appear at any hearing after reasonable notice, the board may proceed to hear the evidence against such licensee or applicant and take action as if such licensee or applicant had been present. A notice of hearing, initial or recommended decision, or final decision of the board in a disciplinary proceeding shall be served upon the licensee or applicant by certified mail or statutory overnight delivery, return receipt requested, to the last known address of record with the board. If such material is returned marked "unclaimed" or "refused" or is otherwise undeliverable and if the licensee or applicant cannot, after diligent effort, be located, the division director shall be deemed to be the agent for service for such licensee or applicant for purposes of this Code section, and service upon the division director shall be deemed to be service upon the licensee or applicant.

(l) The voluntary surrender of a license shall have the same effect as a revocation of said license, subject to reinstatement in the discretion of the board.

(m) This Code section shall apply equally to all licensees or applicants whether individuals, partners, or members of any other incorporated or unincorporated associations, limited liability companies, corporations, or other associations of any kind whatsoever.

(n) All subpoenas issued pursuant to the authority granted in this chapter shall be subject to the general rules of law with respect to distance, tender of fees and expenses, and protective orders; provided, further, any motion made with respect thereto shall be made to and passed on by a judge of the superior court of the county of residence of the person to whom the subpoena is directed. (Ga. L. 1920, p. 132, § 13; Code 1933, § 84-9908; Ga. L. 1937, p. 627, § 1; Ga. L. 1958, p. 25, § 2; Ga. L. 1972, p. 843, § 4; Ga. L. 1974, p. 532, § 1; Ga. L. 1974, p. 1223, § 5; Code 1933, § 84-724, enacted by Ga. L. 1976, p. 484, § 1; Ga. L. 1978, p. 1760, § 1; Ga. L. 1979, p. 853, § 2; Ga. L. 1983, p. 1389, § 6; Ga. L. 1984, p. 22, § 43; Ga. L. 1987, p. 932, § 7; Ga. L. 1988, p. 13, § 43; Ga. L. 1993, p. 123, § 26; Ga. L. 1994, p. 97, § 43; Ga. L. 1996, p. 226, § 3; Ga. L. 1999, p. 234, § 17; Ga. L. 2000, p. 136, § 43; Ga. L. 2000, p. 1589, § 3; Ga. L. 2000, p. 1706, § 19.)

Cross references. — Insurance fraud, § 33-1-9.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, in subsection (a), the paragraph (a)(13) designation, which had been inadvertently stricken by the 1996 amendment, was added.

Pursuant to Code Section 28-9-5, in 1999, "paragraph" was substituted for "subsection" in the last sentence in paragraph (a)(12) and "of this Code section" was inserted in subsection (j).

Editor's notes. — Ga. L. 2000, p. 1589,

§ 16, not codified by the General Assembly, provides that the amendment to subsection (k) is applicable with respect to notices delivered on or after July 1, 2000.

Administrative rules and regulations. — Investigations, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Dentistry, Chapter 150-4.

Law reviews. — For article on the effect on receiving government-issued licenses after a conviction based on a nolo contendere plea, see 13 Ga. L. Rev. 723 (1979).

JUDICIAL DECISIONS

Appellant's summary suspension need not have been predicated upon conviction. — Arrest of the appellant for possession of marijuana, exhibiting pornography to minors, contributing to the delinquency of minors, and sexual battery was sufficient to justify suspension.

Everett v. Georgia Bd. of Dentistry, 264 Ga. 14, 441 S.E.2d 66 (1994).

Cited in Hinson v. Georgia State Bd. of Dental Exmrs., 135 Ga. App. 488, 218 S.E.2d 162 (1975); Hailey v. Georgia State Bd. of Dental Exmrs., 137 Ga. App. 557, 224 S.E.2d 507 (1976).

OPINIONS OF THE ATTORNEY GENERAL

Dentist who files a claim for third party payment in which the dentist asserts a certain fee charged, when in fact the dentist has waived or intends to waive the patient's copayment for the service, without full disclosure to the third

party insurer that such waiver has or will be taking place, may be subject to disciplinary action by the Georgia Board of Dentistry, and may be guilty of a violation of O.C.G.A. § 33-1-9. 1983 Op. Att'y Gen. No. 83-25.

RESEARCH REFERENCES

ALR. — Validity of statute providing for revocation of license of physician, surgeon, or dentist, 5 ALR 94; 79 ALR 323.

What offenses involve moral turpitude within statute providing grounds for denying or revoking license of dentist, physician, or surgeon, 109 ALR 1459.

What amounts to conviction or satisfies requirement as to showing of conviction, within statute making conviction a ground for refusing to grant or for canceling license or special privilege, 113 ALR 1179.

Practice of medicine, dentistry, or law through radio broadcasting stations, newspapers, or magazines, 114 ALR 1506.

Pardon as defense to proceeding for suspension or cancellation of license of physician, surgeon, or dentist, 126 ALR 257.

Statutory power to revoke or suspend license of physician, dentist, or attorney for "unprofessional conduct" as exercise without antecedent adoption of regulation as to what shall constitute such conduct, 163 ALR 909.

Conviction as proof of grounds for revocation or suspension of license of physician, surgeon, or dentist, where conviction of such is not an independent cause, 167 ALR 228.

Alcoholism, narcotics addiction, or mis-

conduct with respect to alcoholic beverages or narcotics, as ground for revocation or suspension of license to practice medicine or dentistry, 93 ALR2d 1398.

Professional incompetency as ground for disciplinary measure against physician or dentist, 28 ALR3d 487.

Pretrial discovery in disciplinary proceedings against physician, 28 ALR3d 1440.

Criminal prosecution or disciplinary action against medical practitioner for fraud in connection with insurance claims or claims under Medicaid, Medicare, or similar welfare program for providing medical service, 50 ALR3d 549; 70 ALR4th 132.

Wrongful or excessive prescription of drugs as ground for revocation or suspension of physician's or dentist's license to practice, 22 ALR4th 668.

Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer, 59 ALR4th 1104.

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner, 70 ALR4th 132.

Necessity of expert evidence in proceeding for revocation or suspension of license of physician, surgeon, or dentist, 74 ALR4th 969.

43-11-48. Initiation of proceedings for violation of chapter; records.

(a) Proceedings under this chapter may be initiated by the board upon its own motion or upon receipt of a signed, written complaint. A board member who forwards a complaint to the attention of the board shall not participate in any further disciplinary proceedings with respect to such applicant or licensee. Disposition of "contested cases,"

within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," shall be governed by Chapter 13 of Title 50.

(b) A record of all hearings, decisions, and orders shall be kept for the board by the division director. (Ga. L. 1920, p. 132, § 16; Code 1933, § 84-716; Ga. L. 1937, p. 627, § 2; Ga. L. 1976, p. 484, § 1; Ga. L. 1982, p. 1056, § 7; Ga. L. 1983, p. 1389, § 7; Ga. L. 1984, p. 22, § 43; Ga. L. 2000, p. 1706, § 19.)

JUDICIAL DECISIONS

Verified accusation or board knowledge of wrongdoing needed for revocation proceedings. — If revocation proceedings of the board are not taken either from matters within the knowledge of the board or upon written verified accusation, the proceedings are invalid and require reversal. *Salerno v. Board of Dental Exmrs.*, 119 Ga. App. 743, 168 S.E.2d 875 (1969) (decided prior to 1982 amendment, which substituted "signed" for "under oath verified" in subsection (a)).

Former Code 1933, § 84-716 (see O.C.G.A. § 43-11-48) did not require that accused be served with written verified accusation, nor was such required by Ga. L. 1965, p. 283, § 13 (see O.C.G.A. § 50-13-13) of the Administrative Procedure Act. *Salerno v. Board of Dental Exmrs.*, 119 Ga. App. 743, 168 S.E.2d 875 (1969).

Dentist's action for declaratory and injunctive relief, seeking to prevent the board of dentistry from taking action against the dentist based on an opinion of the attorney general to the effect that certain procedures being performed by the dentist were not within the lawful scope of the practice of dentistry, was not barred by a failure to exhaust administrative remedies since the only way for the dentist to challenge the board's position was to continue performing the procedures, thereby risking criminal prosecution for the felony offense of practicing medicine without a license and/or the initiation of administrative proceedings to revoke the dentist's license to practice dentistry. *Thomas v. Georgia Bd. of Dentistry*, 197 Ga. App. 589, 398 S.E.2d 730 (1990).

RESEARCH REFERENCES

ALR. — Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 ALR 1388.

Necessity of expert evidence in proceed-

ing for revocation or suspension of license of physician, surgeon, or dentist, 74 ALR4th 969.

43-11-49. Burden of proof as to authority to practice dentistry.

On the trial of anyone charged with the violation of this chapter or with the illegal practice of dentistry, it shall be incumbent on the defendant, upon proof that he or she practiced dentistry, to show that he or she had authority under the law to practice dentistry in order to exempt himself or herself from the penalty for such violation. (Ga. L. 1920, p. 132, § 24; Code 1933, § 84-9911; Ga. L. 1999, p. 234, § 18.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 84-701, 84-9909, 84-9911, are included in the annotations for this Code section.

Burden on defendant whom state shows practiced without license to establish authority to practice. — When the state made out a case by proving that the defendant practiced dentistry in Georgia without having obtained a li-

cense from the board, this proof cast the burden upon the defendant to prove a right to so practice, the law makes the having of a license or other authority to practice dentistry at the time of the passage of former Code 1933, Ch. 84-7 (see O.C.G.A. Ch. 11, T. 43) a matter of defense. *Jordan v. State*, 77 Ga. App. 700, 49 S.E.2d 694 (1948) (decided under former Code 1933, §§ 84-701, 84-9909, 84-9911).

43-11-50. Practice of dentistry without a license.

Any person, firm, partnership, corporation, or other entity who practices dentistry in this state without obtaining a license to practice from the board shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not less than \$500.00 nor more than \$1,000.00 or by imprisonment from two to five years, or both. (Ga. L. 1920, p. 132, § 11; Code 1933, § 84-9909; Ga. L. 1992, p. 2062, § 1; Ga. L. 1999, p. 234, § 19; Ga. L. 2002, p. 578, § 1.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 84-701, 84-9909, 84-9911, are included in the annotations for this Code section.

Constitutionality. — O.C.G.A. § 43-11-50 is not unconstitutional on the basis that the 1992 statute which amended it "refers to more than one subject matter" in violation of Ga. Const. 1983, Art. III, Sec. V, Para. III. Ga. L. 1992, p. 2062 is simply comprehensive legislation in the area of regulation of health professionals. *Wrzesinski v. State*, 271 Ga. 659, 522 S.E.2d 461 (1999).

Burden of defendant whom state shows practiced without license to establish authority to practice. — When the state made out a case by proving that the defendant practiced dentistry in Georgia without having obtained a license from the board, this proof cast the burden upon the defendant to prove a right to so practice; the law makes the having of a license or other authority to practice dentistry at the time of the passage of former Code 1933, Ch. 84-7 (see

O.C.G.A. § 43-11-50) a matter of defense. *Jordan v. State*, 77 Ga. App. 700, 49 S.E.2d 694 (1948) (decided under former Code 1933, §§ 84-701, 84-9909, 84-9911).

Charge barred by limitations period. — Since the defendant's crimes of practicing dentistry without a license in violation of an earlier version of O.C.G.A. § 43-11-50 was subject to the two-year limitations period of O.C.G.A. § 17-3-1(d), and defendant's crime of false statements and writings in violation of O.C.G.A. § 16-10-20 was subject to the four-year limitations period of § 17-3-1(c), the court found that the claims were barred by the limitations period when the offenses were not charged in a timely manner, based on the evidence presented of when the crimes occurred; although the period of limitations did not include any period when the defendant was unknown or the crime was unknown pursuant to O.C.G.A. § 17-3-2(2), it was shown that various individuals, state courts, and other agencies were aware that the defendant held oneself out as a dentist, which knowledge was imputed to the state and accordingly,

the limitations time ran during that period. *McMillan v. State*, 266 Ga. App. 729, 598 S.E.2d 17 (2004), overruled in part by *Gidwell v. State*, 279 Ga. App. 114, 630 S.E.2d 621 (2006).

Evidence was legally sufficient to support the defendant's convictions for misdemeanor theft in violation of O.C.G.A. § 16-8-2 and for practicing dentistry without a license in violation of an earlier version of O.C.G.A. § 43-11-50, since the defendant served as a dentist to numerous individuals, obtained loans for business ventures involving a dentistry practice, obtained services for the dentist practice which the dentist did not pay for, and performed services on patients; the

jury resolved the credibility and weight of the evidence issues pursuant to O.C.G.A. § 24-9-80. *McMillan v. State*, 266 Ga. App. 729, 598 S.E.2d 17 (2004), overruled in part by *Gidwell v. State*, 279 Ga. App. 114, 630 S.E.2d 621 (2006).

Variance between allegation and proof. — Specification of “repairing” a dental device rather than of “manufacturing” one was not sufficient to constitute a fatal variance between allegata and probata when the language of the accusation was sufficiently definite regarding time, place, and nature of the offense to put the defendant on notice as to the nature of the charges. *West v. State*, 178 Ga. App. 550, 343 S.E.2d 759 (1986).

RESEARCH REFERENCES

ALR. — Constitutionality and construction of statutes or regulations prohibiting one who has no license to practice dentistry or medicine from owning, maintaining, or operating an office therefor, 20 ALR2d 808.

Practicing medicine, surgery, dentistry,

optometry, podiatry, or other healing arts without license as a separate or continuing offense, 99 ALR2d 654.

Physician's or other healer's conduct, or conviction of offense not directly related to medical practice, as ground for disciplinary action, 34 ALR4th 609.

43-11-51. Practicing dentistry under another's license.

Any person, firm, partnership, corporation, or other entity who practices dentistry or performs any dental operation under the protection of another's license shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not less than \$500.00 nor more than \$1,000.00 or by imprisonment for not less than two nor more than five years, or both. (Ga. L. 1897, p. 119, § 14; Civil Code 1910, § 1751; Code 1933, § 84-9907; Ga. L. 1999, p. 234, § 20; Ga. L. 2004, p. 720, § 7.)

OPINIONS OF THE ATTORNEY GENERAL

Fingerprintable offenses. — Violation of O.C.G.A. § 43-11-51 is not designated as an offense for which fingerprint-

ing is required. 1999 Op. Att'y Gen. No. 99-17.

JUDICIAL DECISIONS

Terms of contract. — Terms of the contract governing the relationship between the orthodontist and the practice management company made it very clear that the company did not intend, and in

fact did not, employ the orthodontist to carry out the company's own corporate practice of orthodontics, and accordingly, Georgia case law counseled against voiding the contract for illegality. *Glower v.*

Orthalliance, Inc., 337 F. Supp. 2d 1322
(N.D. Ga. 2004).

43-11-52. Volunteers in dentistry and dental hygiene; special licensing; construction.

(a) This Code section shall be known and may be cited as the "Georgia Volunteers in Dentistry and Dental Hygiene Act."

(b) Notwithstanding any other provision of law, the board shall issue a special license to qualifying dentists and dental hygienists under the terms and conditions set forth in this Code section and pursuant to requirements which may be set forth in the rules and regulations of the board. The special license shall only be issued to a person who is retired from the practice of dentistry or dental hygiene and not currently engaged in such practice either full time or part time and has, prior to retirement, maintained full unrestricted licensure in good standing in dentistry or dental hygiene in any state. As used in this subsection, the term "unrestricted" means that no restrictions have been placed on the applicant's license by the board, no sanctions or disciplinary actions have been imposed by the board on the applicant, and the applicant is not under probation or suspension by the board.

(c) The special licensee shall be permitted to practice dentistry or dental hygiene only in the noncompensated employ of public agencies or institutions, not for profit agencies, not for profit institutions, nonprofit corporations, or not for profit associations which provide dentistry or dental hygiene services only to indigent patients in areas which are underserved by dentists or dental hygienists or critical need population areas of the state, as determined by the board, or pursuant to Article 8 of Chapter 8 of Title 31. The practice of dental hygiene by a dental hygienist awarded a special license under this Code section shall be governed by Code Section 43-11-74.

(d) The person applying for the special license under this Code section shall submit to the board a notarized statement from the employing agency, institution, corporation, association, or health care program on a form prescribed by the board, whereby he or she agrees unequivocally not to receive compensation for any dentistry or dental hygiene services he or she may render while in possession of the special license.

(e) The examination by the board, any application fees, and all licensure and renewal fees may be waived for the holder of the special license under this Code section.

(f) If, at the time application is made for the special license, the dentist or dental hygienist is not in compliance with the continuing education requirements established by the board for dentists or dental

hygienists in this state, the dentist or dental hygienist may be issued a nonrenewable temporary license to practice for six months provided the applicant is otherwise qualified for such license.

(g)(1) Except as provided for in paragraph (2) of this subsection, the liability of persons practicing dentistry or dental hygiene under and in compliance with a special license issued under this Code section and the liability of their employers for such practice shall be governed by Code Section 51-1-29.1.

(2) The liability of persons practicing dentistry or dental hygiene pursuant to Article 8 of Chapter 8 of Title 31 under and in compliance with a special license issued under this Code section shall be governed by the provisions of such article.

(h) This Code section, being in derogation of the common law, shall be strictly construed.

(i) Application for a license under this Code section shall constitute consent for performance of a criminal background check. Each applicant who submits an application to the board for licensure agrees to provide the board with any and all information necessary to run a criminal background check, including but not limited to classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of a background check. (Code 1981, § 43-11-52, enacted by Ga. L. 2001, p. 329, § 1; Ga. L. 2002, p. 639, § 1; Ga. L. 2004, p. 720, § 8; Ga. L. 2005, p. 1493, § 3/HB 166; Ga. L. 2008, p. 354, § 4/HB 1222.)

Editor's notes. — Ga. L. 2001, p. 329, § 2, not codified by the General Assembly, provides that this Code section shall be automatically repealed on July 1, 2004, "upon which date any special license issued pursuant to this Act shall also expire."

Ga. L. 2002, p. 639, § 1(b)(2), not codified by the General Assembly, provides: "Section 2 of an Act amending Article 2 of Chapter 11 of Title 43 of the Official Code of Georgia Annotated, relating to licenses for the practice of dentistry, approved April 19, 2001 (Ga. L. 2001, p. 329), which

would have provided for a future repeal or 'sunset' of Code Section 43-11-52 of the Official Code of Georgia Annotated, the 'Georgia Volunteers in Dentistry Act,' is hereby repealed."

Ga. L. 2002, p. 639, § 1(c)(2), not codified by the General Assembly, provides: "The provisions of Code Section 43-11-52 of the Official Code of Georgia Annotated, the 'Georgia Volunteers in Dentistry Act,' which were in effect and applicable on January 1, 2002, shall remain in effect and applicable until and unless changed by future Act of the General Assembly."

ARTICLE 3

DENTAL HYGIENISTS

43-11-70. Examination requirement; issuance of license; posting license.

No person shall practice as a dental hygienist in this state until such person has passed a written and a clinical examination conducted or approved by the board. The fee for such examination shall be paid to the division director and shall be in an amount established by the board. The board shall issue licenses and license certificates as dental hygienists to those persons who have passed the examination in a manner satisfactory to the board, which license certificate shall be posted and displayed in the place in which the hygienist is employed. (Ga. L. 1927, p. 250, § 5; Code 1933, § 84-1009; Ga. L. 1949, p. 1192, § 2; Ga. L. 1963, p. 438, § 1; Code 1933, § 84-726, enacted by Ga. L. 1976, p. 484, § 1; Ga. L. 1987, p. 932, § 8; Ga. L. 2000, p. 1706, § 19; Ga. L. 2004, p. 720, § 9.)

Administrative rules and regulations. — Dental hygiene, Official Compilation of the Rules and Regulations of the

State of Georgia, Georgia Board of Dentistry, Chapter 150-5.

RESEARCH REFERENCES

ALR. — Single or isolated transaction or occupational licensing requirements, as falling within provisions of commercial 93 ALR2d 90.

43-11-70.1. Temporary license authorized.

A person who furnishes the board satisfactory proof of being currently licensed to practice as a dental hygienist in another state and who has applied for, paid the fee for, and been authorized by the board to take the examination required by Code Section 43-11-70 shall be issued a temporary license to practice as a dental hygienist in this state. The temporary license shall be valid from the date of issuance until the results of the first examination scheduled for the applicant are released. If the applicant fails the examination or fails to appear at the examination, the temporary license shall automatically become invalid. No such temporary license shall be issued more than one time nor shall a temporary license be issued to an applicant who has previously failed the examination. If the applicant passes the examination, the temporary license shall remain valid until a license is issued. A temporary license shall be posted and displayed in the place in which the dental hygienist is employed. (Code 1981, § 43-11-70.1, enacted by Ga. L. 1991, p. 352, § 1; Ga. L. 1993, p. 450, § 1.)

43-11-71. Qualifications of applicants for license; criminal background check.

(a) No person shall be entitled to or be issued such license as set out in Code Section 43-11-70 unless such person is at least 18 years of age, of good moral character, and a graduate of a dental hygiene program recognized by the board and accredited by the Commission on Dental Accreditation of the American Dental Association (ADA) or its successor agency which is operated by a school or college accredited by an institutional accrediting agency recognized by the United States Department of Education whose curriculum is at least two academic years of courses at the appropriate level and at the completion of which an associate or baccalaureate degree is awarded.

(b) Application for a license under Code Section 43-11-70 shall constitute consent for performance of a criminal background check. Each applicant who submits an application to the board for licensure agrees to provide the board with any and all information necessary to run a criminal background check, including but not limited to classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of a background check. (Ga. L. 1927, p. 250, § 5; Code 1933, § 84-1009; Ga. L. 1949, p. 1192, § 3; Ga. L. 1975, p. 832, § 1; Code 1933, § 84-727, enacted by Ga. L. 1976, p. 484, § 1; Ga. L. 1987, p. 932, § 8; Ga. L. 1994, p. 97, § 43; Ga. L. 2000, p. 812, § 1; Ga. L. 2004, p. 720, § 10.)

43-11-71.1. Application for license to practice dental hygiene by credentials; procedure; criminal background check; expiration of license.

(a)(1) Applicants for a license to practice dental hygiene by credentials must have received a dental hygiene degree from a dental hygiene school or program accredited by the Commission on Dental Accreditation of the American Dental Association (ADA) or its successor agency, if any, and approved by the board. Applicants must also provide proof of full-time clinical practice, as defined by the board; full-time faculty practice, as defined by the board; or a combination of both for the last two preceding years and hold an active dental hygiene license in good standing from another state.

(2) The board may establish by rule or regulation the requirements for documentation of an applicant's educational and personal qualifications for licensure.

(3) In order to be granted a license under this Code section, all applicants must have passed a clinical examination given by a state or regional testing agency approved by the board and a jurisprudence

examination on the laws of this state and rules and regulations as they relate to the practice of dental hygiene as established or approved by the board, which shall be administered in the English language.

(4) The board may establish additional licensure requirements by rule and regulation.

(b) All applications to the board for a license by credentials shall be made through the division director, who shall then submit all such applications to the board. The fee for licensure by credentials shall be paid to the division director and shall be in an amount established by the board.

(c) Subject to the provisions of Code Section 43-11-72, an applicant who has met the requirements of this Code section shall be granted a license to practice as a dental hygienist.

(d) Application for a license under this Code section shall constitute consent for performance of a criminal background check. Each applicant who submits an application to the board for licensure agrees to provide the board with any and all information necessary to run a criminal background check, including but not limited to classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of a background check.

(e) Upon receipt of license, the applicant by credentials must establish active practice, as defined by rules and regulations of the board, in this state within two years of receiving such license under this Code section or the license shall be automatically revoked. (Code 1981, § 43-11-71.1, enacted by Ga. L. 2004, p. 720, § 11; Ga. L. 2005, p. 60, § 43.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, a semicolon was substituted for a comma following “the board” twice in the second sentence of paragraph (a)(1).

43-11-72. Corrective action against licensee.

The board shall have the authority to refuse to grant, to revoke, or to discipline the license of any licensed dental hygienist in this state based upon any ground or violation enumerated in Code Section 43-11-47, in the same manner and to the same extent as such Code section applies to licenses of dentists, unless the application of any such provision would not be appropriate to the license of a dental hygienist, in accordance with the sanctions, standards, and procedures set forth in that Code section, or for violation of Code Section 43-11-74 or any other law or rule relating to the practice of dental hygiene, in accordance with the sanctions, standards, and procedures set forth in Code Section 43-11-47. (Ga. L. 1949, p. 1192, § 6; Ga. L. 1958, p. 53, § 1; Code 1933,

§ 84-730, enacted by Ga. L. 1976, p. 484, § 1; Ga. L. 1983, p. 1389, § 8; Ga. L. 1987, p. 932, § 8; Ga. L. 2000, p. 136, § 43; Ga. L. 2004, p. 720, § 12.)

RESEARCH REFERENCES

ALR. — Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 ALR 1388.

Professional incompetency as ground for disciplinary measure against physician or dentist, 28 ALR3d 487.

Criminal prosecution or disciplinary action against medical practitioner for fraud in connection with claims under Medicaid, Medicare, or similar welfare program for providing medical service, 50 ALR3d 549; 70 ALR4th 132.

43-11-73. Renewal; cardiopulmonary resuscitation qualification.

(a) Every person licensed by the board to practice dental hygiene shall register biennially on the renewal date set by the division director and shall pay to the division director a registration fee which shall be set by the board. The board shall provide for penalty fees for late registration.

(b) The failure to renew a license by the end of an established penalty period shall have the same effect as a revocation of said license, subject to reinstatement only in the discretion of the board. The board may restore and reissue a license to practice dental hygiene pursuant to this chapter under any terms or conditions that it may deem appropriate.

(c) After 1988, as a prerequisite for license renewal, dental hygienists shall furnish satisfactory evidence of current certification in cardiopulmonary resuscitation, as may be defined by rule or regulation of the board. (Code 1981, § 43-11-73, enacted by Ga. L. 1987, p. 932, § 8; Ga. L. 1996, p. 226, § 4; Ga. L. 2000, p. 1706, § 19.)

Editor's notes. — Former Code Section 43-11-73, relating to records kept by the board, based on Ga. L. 1958, p. 53, § 2;

Ga. L. 1976, p. 484, § 1, was repealed by Ga. L. 1983, p. 1389, § 9, effective March 29, 1983.

43-11-73.1. Continuing education requirement; waiver; rules and regulations.

(a) The board shall be authorized to require persons seeking renewal of a dental hygienist license to complete board approved continuing education of not less than 22 hours biennially. The board shall be authorized to approve courses offered by institutions of higher learning and professional organizations. At least 15 hours of continuing education in each renewal cycle shall be scientifically based.

(b) The board shall be authorized to waive the continuing education requirements in cases of hardship, disability, or illness or under such other circumstances as the board deems appropriate.

(c) The board shall be authorized to promulgate rules and regulations to implement and ensure compliance with the requirements of this Code section.

(d) This Code section shall apply to each licensing, certification, and renewal cycle which begins after the 1990-1991 renewal. (Code 1981, § 43-11-73.1, enacted by Ga. L. 1991, p. 350, § 2; Ga. L. 1997, p. 143, § 43; Ga. L. 1999, p. 234, § 21.)

43-11-74. Direct supervision required; scope of duties; exceptions to required supervision for dental screenings.

(a) Dental hygienists shall perform their duties only under the direct supervision of a licensed dentist. No dental hygienist shall diagnose, prescribe, determine the initial dosage, or increase the initial dosage of nitrous oxide, practice dentistry or do any kind of dental work other than to remove calcareous deposits, secretions, and stains from the surfaces of the teeth, to apply ordinary wash or washes of a soothing character, and to perform those acts, services, procedures, and practices which the board shall prescribe by rule or regulation. The board shall not delegate to dental hygienists the authority to administer local anesthesia, except that this restriction shall automatically expire July 1, 1992.

(b) After meeting such additional education and training requirements as the board may require by rule or regulation, a dental hygienist may perform such other acts, practices, services, or procedures under the direct supervision of a licensed dentist, which the board may prescribe by rule or regulation subject, however, to the limitations set forth in subsection (a) of this Code section.

(c) The requirement of direct supervision shall not apply to the educational training of dental hygiene students at an institution approved by the board and the Commission on Dental Accreditation of the American Dental Association, or its successor agency, when such instruction is carried out under such degree of supervision by a licensed dentist as the board may prescribe by rule or regulation.

(d) The requirement of direct supervision shall not apply to the performance of dental hygiene duties at approved dental facilities of the Department of Public Health, county boards of health, or the Department of Corrections. The board shall provide by rule or regulation for criteria for approval of such facilities and for the appropriate degree of supervision by a licensed dentist over dental hygienists performing duties in such facilities.

(e)(1) As used in this subsection, the term “dental screening” means a visual assessment of the oral cavity without the use of X-rays, laboratory tests, or diagnostic models to determine if it appears that a more thorough examination and diagnosis should be conducted by a dentist.

(2) The requirement of direct supervision shall not apply to the performance of dental hygienists providing dental screenings in settings which include schools, hospitals, and clinics and state, county, local, and federal public health programs. Other health fair settings must be preapproved by the board.

(3) Each person who receives a dental screening pursuant to this subsection, or the parent or legal guardian if the person is a minor, must be informed in writing of the purpose and limitations of a dental screening and advised to seek a more thorough examination by a dentist to determine whether or not problems exist that might not be discovered in a screening. There shall be no fees charged for providing a dental screening pursuant to this subsection except for dental screenings provided by employees of the Department of Public Health or county boards of health. These fees must be paid directly to that department or county board of health and not to the individual who performs the dental screening. (Ga. L. 1927, p. 250, § 5; Code 1933, § 84-1009; Ga. L. 1949, p. 1192, § 4; Code 1933, § 84-728, enacted by Ga. L. 1976, p. 484, § 1; Ga. L. 1986, p. 828, § 1; Ga. L. 1987, p. 932, § 8; Ga. L. 2001, p. 787, § 1; Ga. L. 2002, p. 415, § 43; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2009 amendment, effective July 1, 2009, substituted “Department of Community Health” for “Department of Human Resources” in the first sentence of subsection (d), and in the second sentence of paragraph (e)(3).

The 2011 amendment, effective July 1, 2011, substituted “Department of Pub-

lic Health” for “Department of Community Health” in the first sentence of subsection (d), and in the second sentence of paragraph (e)(3).

Law reviews. — For note on the 2001 amendment to this Code section, see 18 Georgia St. U.L. Rev. 238 (2001).

OPINIONS OF THE ATTORNEY GENERAL

Administration of local anesthesia. — Board of dentistry is authorized by O.C.G.A. § 43-11-74 to promulgate rules to permit delegating the administration of

local anesthesia to dental hygienists under the supervision of a practitioner. 2003 Op. Att’y Gen. No. 03-1.

43-11-75. Applicability of article.

This article shall not apply to licensed dentists, nor shall this article apply to physicians licensed in this state in extracting teeth or performing surgical operations and in charging therefor or to accredited schools of dentistry. (Ga. L. 1949, p. 1192, § 8; Code 1933, § 84-731, enacted by

Ga. L. 1976, p. 484, § 1; Ga. L. 1987, p. 932, § 8; Ga. L. 1999, p. 234, § 22.)

43-11-76. Unlicensed practice of dental hygiene.

Any person who engages in the practice of dental hygiene without first having obtained a license therefor shall be guilty of a misdemeanor. (Code 1981, § 43-11-76, enacted by Ga. L. 1983, p. 1389, § 10; Ga. L. 1987, p. 932, § 8.)

ARTICLE 4

DENTAL ASSISTANTS

43-11-80. Acts, services, practices, and procedures authorized.

(a) A dental assistant is one, other than a licensed dentist or licensed dental hygienist, who is employed to assist a licensed dentist by performing those acts, services, practices, and procedures as may be prescribed by rule or regulation of the board.

(b) After meeting such additional education and training requirements as the board may require by rule or regulation, a dental assistant may perform such other acts, practices, services, or procedures, under the direct supervision of a licensed dentist, which the board may prescribe by rule or regulation. (Code 1981, § 43-11-80, enacted by Ga. L. 1987, p. 932, § 9.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1987, “board” was substituted for “Georgia Board of Dentistry” at the end of subsection (a).

43-11-81. Direct supervision required.

Dental assistants shall perform their duties only under the direct, personal supervision of a licensed dentist. No dental assistant shall practice dentistry, dental hygiene, or do any kind of dental work other than those acts, services, procedures, and practices prescribed by rule or regulation of the board. (Code 1981, § 43-11-81, enacted by Ga. L. 1987, p. 932, § 9.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1987, “board” was substituted for “Georgia Board of Dentistry” at the end of the second sentence.

43-11-82. Exceptions to application of article.

This article shall not apply to licensed dentists or dental hygienists, nor shall this article apply to physicians licensed in this state in

extracting teeth or performing surgical operations and in charging therefor or to accredited schools of dentistry. (Code 1981, § 43-11-82, enacted by Ga. L. 1987, p. 932, § 9; Ga. L. 1999, p. 234, § 23.)

CHAPTER 11A

DIETETICS PRACTICE ACT

Sec.

- 43-11A-1. Short title.
- 43-11A-2. Purpose of chapter.
- 43-11A-3. Definitions.
- 43-11A-4. Creation of board.
- 43-11A-5. Qualifications, appointment, and removal of board members.
- 43-11A-6. Election of officers; meetings of board.
- 43-11A-7. Powers of board.
- 43-11A-8. Grant of license without examination.
- 43-11A-9. Eligibility for license.
- 43-11A-10. Provisional permits.
- 43-11A-11. Power of board to require applications be made under oath.

Sec.

- 43-11A-12. Notification of applicants of acceptance or rejection.
- 43-11A-13. Examinations.
- 43-11A-14. Surrender of license on demand; display requirement; notice of change of address; renewal; inactive status.
- 43-11A-15. Refusal, suspension, or revocation of license; other disciplinary actions.
- 43-11A-16. License requirement; registered dietitians.
- 43-11A-17. Applicability of "Georgia Administrative Procedure Act."
- 43-11A-18. Exceptions.
- 43-11A-19. Eligibility of nutritionists for license.

Administrative rules and regulations. — Organization of board, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Examiners of Licensed Dietitians, Chapter 157-1.

Ethics of dietitians, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Examiners of Licensed Dietitians, Chapter 157-6.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 39 Am. Jur. 2d, Health, §§ 1 et seq., 26 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614,

615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 39A C.J.S., Health and Environment, §§ 3 et seq., 37 et seq., 48 et seq. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

43-11A-1. Short title.

This chapter shall be known and may be cited as the “Dietetics Practice Act.” (Code 1981, § 43-11A-1, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1994, p. 971, § 1.)

43-11A-2. Purpose of chapter.

The General Assembly acknowledges that the application of scientific knowledge relating to nutrition is important in the treatment of disease and in the attainment and maintenance of health; and acknowledges further that the rendering of sound dietetic or nutrition services in hospitals, nursing homes, school districts, health departments, private practice and consultation, and in other settings requires trained and competent professionals. It is declared, therefore, to be the purpose of this chapter to protect the health, safety, and welfare of the public by providing for the licensure and regulation of the activities of persons engaged in dietetic practice. (Code 1981, § 43-11A-2, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1994, p. 971, § 1.)

43-11A-3. Definitions.

As used in this chapter, the term:

(1) “Advertise” means, but is not limited to, the issuing of or causing to be distributed any card, sign, or other device or the causing or permitting any sign or marking on or in any building or structure or in any newspaper, magazine, or directory or announcement on radio or announcement or display on television.

(2) “Applicant” means any person seeking a license under this chapter.

(3) “Board” means the Georgia Board of Examiners of Licensed Dietitians established by this chapter.

(4) “Dietetic practice” or “dietetics” means the integration and application for compensation of principles derived from the sciences of nutrition, biochemistry, food, physiology, management, and behavioral and social sciences to achieve and maintain client health through the provision of nutrition care services, which shall include:

(A) Assessing the nutritional needs of individuals and groups based upon appropriate biochemical, anthropometric, physical, and dietary data to determine nutrient needs and recommend appropriate intake including enteral and parenteral nutrition;

(B) Establishing priorities, goals, and objectives which meet nutritional needs and are consistent with available resources;

(C) Providing dietetic nutrition counseling by advising and assisting individuals or groups on appropriate nutritional intake by integrating information from the nutritional assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status;

(D) Developing, implementing, and managing nutrition care delivery systems; and

(E) Evaluating, making changes in, and maintaining standards of quality in food and nutrition care services.

As used in this chapter, the terms “dietetic practice,” “dietetics,” and “medical nutrition therapy” are interchangeable.

(5) “Dietitian” means a person duly licensed under this chapter to practice dietetics. As used in this chapter, the terms “dietitian” and “dietetic counselor” are interchangeable.

(6) “Provisionally licensed dietitian” means a person provisionally licensed under this chapter.

(7) “Registered dietitian” means a person registered by the Commission on Dietetic Registration of the American Dietetic Association. (Code 1981, § 43-11A-3, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1987, p. 1149, § 1; Ga. L. 1994, p. 971, § 1; Ga. L. 1999, p. 81, § 43.)

43-11A-4. Creation of board.

(a) There is created the Georgia Board of Examiners of Licensed Dietitians. The board shall consist of seven members as follows:

(1) Six members shall be dietitians with at least one member from each of the following areas of dietetic practice: clinical dietetics; community or public health dietetics; an educator on the faculty of a college or university specializing in the field of dietetics; and the private practice of dietetics; and

(2) One member shall represent the public at large.

(b) The Georgia Board of Examiners of Licensed Dietitians existing immediately prior to July 1, 1994, is continued in existence and shall continue to consist of seven members to be appointed by the Governor with the confirmation of the Senate. Members of the board shall take office on the first day of July immediately following the expired terms of that office and shall serve for a term of four years and until their successors are appointed and qualified. Those persons serving as members of the board immediately prior to July 1, 1994, shall continue to serve out their respective terms of office and until their respective

successors are appointed and qualified. Any person appointed to the board when the Senate is not in session may serve on the board without Senate confirmation until the Senate acts on that appointment. No member shall serve on the board for more than two consecutive terms. Any vacancy shall be filled by the Governor subject to confirmation of the Senate.

(c) All members of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.

(d) All members of the board shall take the constitutional oath of office. (Code 1981, § 43-11A-4, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1994, p. 971, § 1; Ga. L. 1999, p. 81, § 43.)

43-11A-5. Qualifications, appointment, and removal of board members.

(a) Professional members of the board shall:

- (1) Be citizens of the United States and residents of this state;
- (2) Have engaged in the dietetic practice for compensation for not less than five years; and
- (3) Be licensed under this chapter.

(b) Consumer members of the board shall be appointed by the Governor from the public at large, shall be citizens of the United States and residents of this state, and shall have no connection whatsoever with dietetic practice.

(c) The Governor may remove members of the board, after notice and opportunity for hearing, for incompetence, neglect of duty, unprofessional conduct, conviction of any felony, failure to meet the qualifications of this chapter, or committing any act prohibited by this chapter. (Code 1981, § 43-11A-5, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1994, p. 971, § 1.)

43-11A-6. Election of officers; meetings of board.

The board shall meet annually and shall elect from its members a chairperson, vice chairperson, and any other officers as deemed necessary who shall hold office according to the rules adopted by the board. In addition to its annual meeting, the board shall hold at least two other meetings each year as provided by the rules adopted by the board. (Code 1981, § 43-11A-6, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1994, p. 971, § 1.)

43-11A-7. Powers of board.

This board shall have the power to:

(1) Enforce the provisions of this chapter, and it shall be granted all of the necessary duties, powers, and authority to carry out this responsibility;

(2) Draft, adopt, amend, repeal, and enforce such rules as it deems necessary for the administration and enforcement of this chapter in the protection of public health, safety, and welfare;

(3) License duly qualified applicants by examination, endorsement, or reinstatement;

(4) Implement the disciplinary process;

(5) Enforce qualifications for licensure;

(6) Set standards for competency of licensees continuing in or returning to practice;

(7) Issue orders when a license is surrendered to the board while a complaint, investigation, or disciplinary action against such license is pending;

(8) Adopt, revise, and enforce rules regarding the advertising by licensees including, but not limited to, rules to prohibit false, misleading, or deceptive practices;

(9) Adopt, publish in print or electronically, and enforce a code of ethics;

(10) Establish examination and licensing fees;

(11) Request and receive the assistance of state educational institutions or other state agencies;

(12) Prepare information of consumer interest describing the regulatory functions of the board and describing the procedures by which consumer complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies;

(13) Establish continuing education requirements; and

(14) Adopt a seal which shall be affixed only in such manner as prescribed by the board. (Code 1981, § 43-11A-7, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1994, p. 971, § 1; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted "in print or electronically" in paragraph (9).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, the subsection "(a)" designation was deleted.

Administrative rules and regulations. — Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Examiners of Licensed Dietitians, Chapter 157-1 et seq.

43-11A-8. Grant of license without examination.

The board may grant, upon application and payment of proper fees, a license without examination to a person who, at the time of application, either:

- (1) Holds a valid license as a licensed dietitian issued by another state, political territory, or jurisdiction acceptable to the board if, in the board's opinion, the requirements for that license are substantially equal to or greater than the requirements of this chapter; or
- (2) Presents evidence satisfactory to the board that the applicant is registered as a registered dietitian by the Commission on Dietetic Registration of the American Dietetic Association or its successor organization. (Code 1981, § 43-11A-8, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1987, p. 1149, § 2; Ga. L. 1994, p. 971, § 1.)

43-11A-9. Eligibility for license.

Each applicant for a license as a dietitian shall be at least 18 years of age, shall have submitted a completed application upon a form and in such manner as the board prescribes, accompanied by applicable fees, and shall be in compliance with the following requirements:

- (1) Receipt of a baccalaureate or higher degree from a college or university accredited by the Southern Association of Schools and Colleges or any other regional accreditation agency with a major course of study in dietetics, human nutrition, food and nutrition, nutrition education, or food systems management;
- (2) Satisfactory completion of a documented, supervised experience component in dietetic practice of not less than 900 hours supervised by a licensed dietitian or registered dietitian as prescribed by the board;
- (3) Successful completion of an examination as required by Code Section 43-11A-13; and
- (4) Completion of such other requirements as may be prescribed by the board. (Code 1981, § 43-11A-9, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1987, p. 1149, § 3; Ga. L. 1994, p. 971, § 1.)

43-11A-10. Provisional permits.

A provisional permit to practice as a provisionally licensed dietitian under the supervision of a dietitian may be issued by the board upon the filing of an application with appropriate fees and submission of evidence of successful completion of a substantial portion of the requirements for licensure as provided by Code Section 43-11A-9, at the

discretion of the board. The permit shall be issued for one year and may be renewed at the discretion of the board for a length of time determined by the board. A renewal fee may be required by the board to maintain a provisional license. (Code 1981, § 43-11A-10, enacted by Ga. L. 1994, p. 971, § 1.)

Editor's notes. — Ga. L. 1987, p. 1149, § 4, effective April 16, 1987, repealed former Code Section 43-11A-10, relating to exception from internship requirement, which was based on Ga. L. 1984, p. 1377, § 1.

43-11A-11. Power of board to require applications be made under oath.

The board may require that all applications be made under oath. (Code 1981, § 43-11A-11, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1994, p. 971, § 1.)

43-11A-12. Notification of applicants of acceptance or rejection.

After evaluation of an application and other evidence submitted, the board shall notify each applicant that the application and evidence submitted are satisfactory and accepted or unsatisfactory and rejected. If rejected, the notice shall state the reasons for the rejection. (Code 1981, § 43-11A-12, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1994, p. 971, § 1.)

43-11A-13. Examinations.

(a) Examinations to determine competence shall be administered to qualified applicants at least twice each calendar year. The examinations may be administered by a national testing service. The board shall prescribe or develop the examinations which may include an examination given by the Commission on Dietetic Registration of the American Dietetic Association or any other examination approved by two-thirds' vote of the board.

(b) The board shall notify each examinee of the results of the examination. (Code 1981, § 43-11A-13, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1994, p. 971, § 1.)

43-11A-14. Surrender of license on demand; display requirement; notice of change of address; renewal; inactive status.

(a) A license issued by the board is the property of the board and must be surrendered on demand.

(b) The licensee shall display the license certificate in an appropriate and public manner.

(c) The licensee shall inform the board of any change of address.

(d) The license shall be renewed biennially if the licensee is not in violation of this chapter at the time of application for renewal and if the applicant fulfills current requirements of continuing education as established by the board.

(e) Each person licensed under this chapter is responsible for renewing his or her license before the expiration date.

(f) Under procedures and conditions established by the board, a licensee may request that his or her license be declared inactive. The licensee may apply for active status at any time and upon meeting the conditions set by the board shall be declared active. (Code 1981, § 43-11A-14, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1994, p. 971, § 1.)

43-11A-15. Refusal, suspension, or revocation of license; other disciplinary actions.

The board may refuse to grant or renew a license to an applicant; administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the licensee; suspend any licensee for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said license; limit or restrict any licensee as the board deems necessary for the protection of the public; revoke any license; condition the penalty upon, or withhold formal disposition pending, the applicant's or licensee's submission to such care, counseling, or treatment as the board may direct; or impose a fine not to exceed \$500.00 for each violation of a law, rule, or regulation relating to the profession regulated by this chapter upon a finding by a majority of the entire board that the licensee or applicant has:

(1) Failed to demonstrate the qualifications or standards for a license contained in this Code section or under the laws, rules, or regulations under which licensure is sought or held; it shall be incumbent upon the applicant to demonstrate to the satisfaction of the board that said applicant meets all the requirements for the issuance of a license, and, if the board is not satisfied as to the applicant's qualifications, it may deny a license without a prior hearing; provided, however, that the applicant shall be allowed to appear before the board if he or she so desires;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of a business or profession licensed under this title or on any document connected therewith; or practiced fraud or deceit or intentionally made any false statement in obtaining

a license to practice the licensed business or profession; or made a false statement or deceptive registration with the board;

(3) Been convicted of any felony or of any crime involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States; as used in this paragraph and paragraph (4) of this Code section, the term "felony" shall include any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere; and, as used in this paragraph, the term "conviction" shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;

(4) Been arrested, charged, and sentenced for the commission of any felony, or any crime involving moral turpitude, where:

(A) A plea of nolo contendere was entered to the charge;

(B) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(C) An adjudication or sentence was otherwise withheld or not entered on the charge.

The plea of nolo contendere or the order entered pursuant to the provisions of Article 3 of Chapter 8 of Title 42, relating to probation of first offenders, or other first offender treatment shall be conclusive evidence of arrest and sentencing for such crime;

(5) Had his or her license to practice a business or profession licensed under this title revoked, suspended, or annulled by any lawful licensing authority other than the board; or had other disciplinary action taken against him or her by any such lawful licensing authority other than the board; or was denied a license by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings; or was refused the renewal of a license by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings;

(6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or applicant to practice a business or profession licensed under this title, or of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of the licensed business or profession but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness; unprofessional conduct shall also include any departure from, or the failure to conform to, the minimal standards of

acceptable and prevailing practice of the business or profession licensed under this title;

(7) Knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person or any licensee whose license has been suspended or revoked by a professional licensing board to practice a business or profession licensed under this title or to practice outside the scope of any disciplinary limitation placed upon the licensee by the board;

(8) Violated a statute, law, or any rule or regulation of this state, any other state, the professional licensing board regulating the business or profession licensed under this title, the United States, or any other lawful authority, without regard to whether the violation is criminally punishable, which statute, law, or rule or regulation relates to or in part regulates the practice of a business or profession licensed under this title, when the licensee or applicant knows or should know that such action is violative of such statute, law, or rule or regulation; or violated a lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or license reinstatement;

(9) Been adjudged mentally incompetent by a court of competent jurisdiction within or outside of this state; any such adjudication shall automatically suspend the license of any such person and shall prevent the reissuance or renewal of any license so suspended for as long as the adjudication of incompetence is in effect; or

(10) Displayed an inability to practice a business or profession licensed under this title with reasonable skill and safety to the public or has become unable to practice the licensed business or profession with reasonable skill and safety to the public by reason of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material. (Code 1981, § 43-11A-15, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1992, p. 6, § 43; Ga. L. 1994, p. 971, § 1; Ga. L. 2000, p. 1706, § 19.)

Code Commission notes. — Pursuant section” was substituted for “subsection” to Code Section 28-9-5, in 1992, “Code in paragraph (3).

43-11A-16. License requirement; registered dietitians.

(a) Only a person licensed or otherwise authorized to practice under this chapter shall be engaged in dietetic practice or use the title “dietitian” or use the letters “LD” or any facsimile thereof or represent himself or herself to the public as a dietitian.

(b) Notwithstanding any other provisions of this Code section, a person duly registered as a registered dietitian shall have the right to

use the title “registered dietitian,” the designation “RD,” or any facsimile thereof.

(c) Any person violating the provisions of subsection (a) of this Code section shall be guilty of a misdemeanor. (Code 1981, § 43-11A-16, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1994, p. 971, § 1; Ga. L. 1999, p. 81, § 43.)

Administrative rules and regulations. — Licensure requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Examiners of Licensed Dietitians, Chapter 157-2.

43-11A-17. Applicability of “Georgia Administrative Procedure Act.”

Proceedings under this chapter shall be governed by Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” (Code 1981, § 43-11A-17, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1994, p. 971, § 1.)

43-11A-18. Exceptions.

Nothing in this chapter shall be construed to affect or prevent:

(1) A student enrolled in an approved academic program in dietetics from engaging in the practice of dietetics under the supervision of a dietitian; or a dietetic technician, certified dietary manager, or dietetic aide in a health care facility from providing nutrition services under the supervision of or in consultation with a dietitian;

(2) A dietitian who is serving in the armed forces of the United States or any other federal agency from engaging in the practice of dietetics, provided that such practice is related to service or employment;

(3) Persons licensed to practice the professions of dentistry, medicine, osteopathy, chiropractic, nursing, or pharmacy from engaging in the practice of dietetics when incidental to the practice of their profession, except that such persons may not use the title “dietitian”;

(4) A nonresident registered dietitian from practicing dietetics in this state for five days without a license or up to 30 days per year with licensure from another state if the requirements for licensure are substantially equal to the requirements contained in this chapter;

(5) Employees of a department, agency, or division of state, county, or local government from engaging in the practice of dietetics within the discharge of official duties when such practice is directed by or in consultation with a dietitian licensed under this chapter;

(6) Persons who were engaged in dietetic practice prior to July 1, 1994, but the prohibition of Code Section 43-11A-16 shall apply to such persons on and after July 1, 1995;

(7) Persons who provide weight control services, provided the weight control program has been reviewed by, consultation is available from, and no program change can be initiated without the prior approval of either a dietitian licensed under this chapter, a dietitian licensed in another state which has licensure requirements which are substantially equal to the requirements contained in this chapter, or a registered dietitian;

(8) Persons from marketing or distributing food, disseminating information on food, food materials, dietary or food supplements, or minerals or herbs, including but not limited to operators and employees of health food stores or other licensed businesses which sell such products, provided that such persons shall not engage in the oral or written explanation of the historical use, benefit, or preparation of such products which is intentionally deceptive or fraudulent, and such persons shall not furnish specific nutrition information related to such products which is deceptive or fraudulent. Persons included in this paragraph shall not use the title "dietitian" and shall not designate themselves by any other term or title which implies that such persons are licensed under this chapter;

(9) The practice of the tenets of any religion, sect, or denomination whatsoever, provided that a member of such religion, sect, or denomination shall not use the title "dietitian" and shall not designate himself or herself by any other term or title which implies that such member is engaged in dietetic practice; or

(10) Persons with a master's or doctorate degree from any regionally accredited college or university with a major course of study in human nutrition, food and nutrition, dietetics, food systems management, or nutrition education, or persons with a doctorate degree from a regionally accredited college or university with a major course of study in nutritional biochemistry, provided that such persons shall not use the title "dietitian." (Code 1981, § 43-11A-18, enacted by Ga. L. 1994, p. 971, § 1.)

Editor's notes. — Ga. L. 1992, p. 3137, § 12, effective July 1, 1992, repealed former Code Section 43-11A-18, relating to termination of the former Dietitians Licensing Law, which was based on Ga. L. 1984, p. 1377, § 1 and Ga. L. 1989, p. 291, § 1.

43-11A-19. Eligibility of nutritionists for license.

A person who does not meet the requirements for licensure under this chapter but who has been employed as a nutritionist under the state or

a county merit system for at least five years prior to July 1, 1993, and who makes application for licensure as a dietitian prior to July 1, 1995, may be granted a license as a dietitian if he or she pays the required fee and complies with the continuing education requirements established by the board. (Code 1981, § 43-11A-19, enacted by Ga. L. 1984, p. 1377, § 1; Ga. L. 1994, p. 971, § 1.)

CHAPTER 12

DISABLED VETERANS AND BLIND PERSONS ENGAGING IN PEDDLING, OPERATING BUSINESSES, OR PRACTICING PROFESSIONS

Sec.		Sec.	
43-12-1.	Exemption from payment of occupation tax, administrative fee, or regulatory fee.		requirement of additional proof; rules and regulations as to certificates of exemption.
43-12-2.	Qualifications; proof of blindness, handicap, or disability.	43-12-6.	Cancellation or suspension of certificates of exemption.
43-12-3.	Application for certificate of eligibility; ten-year period of validity.	43-12-7.	Payment of income taxes by applicants for exemption.
43-12-4.	Description of proposed business.	43-12-8.	Restrictions on businesses, professions, or semiprofessions which may be engaged in.
43-12-5.	Certificate of eligibility as prima-facie evidence of right to a certificate of exemption; re-	43-12-9.	Utilization of certificate of exemption by person other than lawful holder.

Cross references. — Veterans preference, Ga. Const. 1983, Art. IV, Sec. III, Para. II. Veteran's affairs, T. 38, C. 4.

Peddlers and itinerant traders, § 43-32-1 et seq. Veterans' civil service preference, T. 45, C. 2, A. 2.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the provisions, opinions under former Code 1933, Ch. 84-20 are included in the annotations for this chapter.

Although cities may compel disabled veterans to obtain licenses, cities cannot compel payment for licenses. — If one has qualified as a disabled veteran under provisions of this chapter, a city cannot compel that veteran to pay license fee or tax imposed upon conduct of that veteran's business; however, if the city has enacted by valid ordinance under police powers vested in the city regulating businesses, the city may require one to obtain a license under pro-

visions of that ordinance though one still may not be required to pay any fee for such license. 1954-56 Op. Att'y Gen. p. 904.

Real estate brokers and insurance agents not exempt from payment of license fees. — Veteran's certificate of exemption issued under authority of this chapter does not exempt either a real estate broker or a general insurance agent from payment of license fees. 1950-51 Op. Att'y Gen. p. 229 (decided under former Code 1933, Ch. 84-20, as it read prior to its revision by Ga. L. 1953, Nov.-Dec. Sess., p. 431, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d,

Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and De-

pendencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq. New Topic Service, Americans with Disabilities Act, § 1 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law,

§ 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

43-12-1. Exemption from payment of occupation tax, administrative fee, or regulatory fee.

Subject to the limitations provided in this chapter, the following classes of persons may peddle, conduct business, or practice the professions and semiprofessions in any county or municipality in this state without paying an occupation tax, administrative fee, or regulatory fee for the privilege of so doing, provided such person receives a certificate of exemption issued by the commissioner of veterans service:

(1) Any disabled veteran of any war or armed conflict in which any branch of the armed forces of the United States engaged, whether under United States command or otherwise;

(2) Any blind person; or

(3) Any veteran of peace-time service in the United States armed forces who has a physical disability incurred during the period of such service. (Code 1868, § 569; Code 1873, § 534; Code 1882, § 534; Ga. L. 1882-83, p. 64, § 1; Ga. L. 1889, p. 50, § 1; Ga. L. 1890-91, p. 63, § 1; Ga. L. 1895, p. 19, § 1; Civil Code 1895, § 1642; Ga. L. 1897, p. 24, § 1; Ga. L. 1898, p. 46, § 1; Civil Code 1910, § 1888; Ga. L. 1918, p. 116, § 1; Ga. L. 1919, p. 91, § 1; Code 1933, § 84-2011; Ga. L. 1935, p. 163, § 2; Ga. L. 1953, Nov.-Dec. Sess., p. 431, § 2; Ga. L. 1971, p. 348, § 1; Ga. L. 1972, p. 456, § 1; Ga. L. 1983, p. 1401, § 13; Ga. L. 1996, p. 1268, § 1.)

Editor's notes. — Ga. L. 1983, p. 1401, § 1, not codified by the General Assembly, provided: "It is the intent of this Act to implement certain changes required by

Article IV, Section V, Paragraph I, subparagraph (b) of the [1976] Constitution of the State of Georgia." See Ga. Const. 1983, Art. IV, Sec. V, Para. I.

JUDICIAL DECISIONS

Disabled veterans cannot be compelled to pay city for privilege of doing business. — Disabled soldier of World War I, who is a resident of this state, has a right to conduct a business without paying license for privilege of

doing so to a town or city in which business is conducted. *City of Marietta v. Brantley*, 170 Ga. 258, 152 S.E. 232 (1930).

Tax as equivalent of paying for privilege of doing business. — To re-

quire a soldier to pay a tax would be to require the soldier to pay a license for privilege of conducting a business. *Tyner v. Winslett*, 174 Ga. 267, 162 S.E. 807 (1932).

Statutory exemption was only from occupation taxes, and did not purport to confer any additional right or privilege. *McKinney v. Patton*, 176 Ga. 719, 169 S.E. 16 (1933); *Snipes v. Flournoy*, 178 Ga. 815, 174 S.E. 617 (1934).

Statute neither expressly nor by implication takes away police powers of towns, cities, or counties. *City of Marietta v. Howard*, 208 Ga. 719, 69 S.E.2d 246 (1952) (see O.C.G.A. § 43-12-1).

Exemptions construed strictly against grantee. — Purported exemptions from taxation, being in derogation of sovereign authority of the state, are construed strictly against grantee. *Snipes v. Flournoy*, 178 Ga. 815, 174 S.E. 617 (1934).

Although exempt from fee, disabled veteran must obtain license to operate common motor carrier. — When a person was exempted from paying license fees under provisions of this statute, the person must still obtain necessary license to operate a common motor carrier and may not operate without the license. *McKinney v. Patton*, 176 Ga. 719, 169 S.E. 16 (1933) (see O.C.G.A. § 43-12-1).

Even though a veteran may hold the certificate contemplated by statute, the veteran still may not conduct business of a motor carrier without obtaining from the Public Service Commission a certificate of public convenience and necessity as other persons are required to do. *McKinney v. Patton*, 176 Ga. 719, 169 S.E. 16 (1933); *Snipes v. Flournoy*, 178 Ga. 815, 174 S.E. 617 (1934).

Exemption does not apply to state license taxes, and such exemption would not authorize a disabled veteran to carry on business of real estate broker without obtaining a license from the Georgia Real

Estate Commission. *Dixon v. Brooke*, 44 Ga. App. 608, 162 S.E. 287 (1932).

Exemption applied although veteran did not own peddled goods. — Defendant was authorized to peddle under certificate of exemption issued in defendant's own name under this statute despite the fact that the defendant did not own the goods being peddled. *Roberts v. City of Eatonton*, 50 Ga. App. 592, 179 S.E. 144 (1935) (see O.C.G.A. § 43-12-1).

Certificate of exemption as proof that one was a disabled veteran. — Any disabled veteran of the World War, resident in this state, may peddle or conduct business in any town, city, or county without obtaining a license; and the certificate of exemption stating the fact that the individual was a disabled or indigent veteran shall be sufficient proof. *Smith v. City of Atlanta*, 51 Ga. App. 17, 179 S.E. 558 (1935).

Certificate cannot be transferred. — Disabled veteran, resident of this state, may not transfer or grant disabled veteran's privilege to peddle goods without a license to any other person. *Smith v. City of Atlanta*, 51 Ga. App. 17, 179 S.E. 558 (1935).

Veteran's remedy was at law, not injunction against city arrest. — After a suit was instituted by a Confederate soldier claiming an exemption under this statute to enjoin the city from arresting the soldier and from in any way interfering with the soldier's business as a peddler, a court of equity would not interfere by injunction to restrain execution of municipal ordinance of a criminal nature, on ground of invalidity of such ordinance, nor on further ground that the plaintiff is exempt from operation of the ordinance. The person affected has a full and adequate remedy at law to test the validity of the ordinance, as well as the question of exemption from the ordinance's operation. *City of Marietta v. Brantley*, 170 Ga. 258, 152 S.E. 232 (1930) (see O.C.G.A. § 43-12-1).

Cited in *Campbell v. Williams*, 215 Ga. 717, 113 S.E.2d 143 (1960).

OPINIONS OF THE ATTORNEY GENERAL

ANALYSIS

GENERAL CONSIDERATIONS

LIMITATIONS ON VETERANS' EXEMPTION

General Considerations

Veteran's business license exemption applies to all cities and towns in this state. 1948-49 Op. Att'y Gen. p. 300; 1948-49 Op. Att'y Gen. p. 301.

Holders of certificates of exemption may peddle goods throughout state without paying license fee. — When a certificate of exemption is issued by the state revenue commissioner (now commissioner of veterans service), holder of such certificate is entitled to peddle goods in various cities, towns, and counties of state without paying a license for such privilege. 1965-66 Op. Att'y Gen. 66-183.

Exempt veteran's employees need no license. — Disabled veteran who holds certificate of exemption issued by state revenue commissioner (now commissioner of veterans service) to conduct business may employ agents, servants, and helpers and those agents, servants, and helpers are not required to obtain a license to conduct business. 1954-56 Op. Att'y Gen. p. 905.

Exemption applies to local taxes. — If veteran meets with qualifications of law, which is assumed by virtue of holding a license, the veteran is exempt from further taxation by city. 1950-51 Op. Att'y Gen. p. 381.

There is no limit on number of employees veteran may have under certificate of exemption. 1945-47 Op. Att'y Gen. p. 486.

Veteran may include interrelated business in exemption. — Statute limited a veteran to one independent business license exemption; if a veteran was operating an interrelated business, such interrelated business naturally would come under the exemption. 1948-49 Op. Att'y Gen. p. 309 (see O.C.G.A. § 43-12-1).

If business enterprises taken together to form one business, exemption may cover all. — Disabled veteran that operated several different and independent types of businesses was entitled only to an exemption upon one business; it was conceivable that many business enterprises which are made up of several component parts were at the same time

interrelated and taken together form one business. 1948-49 Op. Att'y Gen. p. 308.

Limitations on Veterans' Exemption

Former Code 1933, § 84-2011 did not exempt disabled veterans from obtaining licenses, only from payment therefor. — There was no provision of law which would authorize a veteran to conduct a business without a license; however, the statute does exempt disabled veterans from payment of certain licenses. 1958-59 Op. Att'y Gen. p. 374 (see O.C.G.A. § 43-12-1).

No exemption from regulatory statutes charging fees to defray enforcement expenses. — It is well settled that the statute exempted disabled veterans who qualify under terms and conditions of the law from payment of revenue and occupational taxes and did not confer a right to exemption from state and local police regulation including license fees or taxes imposed under police power for regulatory purposes. 1954-56 Op. Att'y Gen. p. 390; 1957 Op. Att'y Gen. p. 338; 1958-59 Op. Att'y Gen. p. 263 (see O.C.G.A. § 43-12-1).

Provisions of former Code 1933, Ch. 84-20 applicable to veterans do not apply to regulatory statute, wherein fee was not charged to produce revenue but to defray expenses of enforcement of rules and regulations. 1957 Op. Att'y Gen. p. 145.

Veterans not exempt from regulation of businesses classified as privileges. — Statute referred only to fees charged by municipalities for exercising rights as distinguished from privileges and the statute does not give one seeking to engage in a business classified as a privilege immunity from satisfying conditions legally imposed by licensing agency including payment of any fee imposed in order to have such privilege. 1954-56 Op. Att'y Gen. p. 909; 1958-59 Op. Att'y Gen. p. 374; 1960-61 Op. Att'y Gen. p. 585 (see O.C.G.A. § 43-12-1).

Exemption is inapplicable to licenses issued by Surface Mined Land Use Board. 1970 Op. Att'y Gen. No. 70-136.

Exemption is inapplicable to commercial fisherman's license required by game and fish laws. 1957 Op. Att'y Gen. p. 145.

Statute did not exempt veterans from payment of ad valorem taxes. 1962 Op. Att'y Gen. p. 501 (see O.C.G.A. § 43-12-1).

License exemption is personal and does not extend to corporation owned by veteran. 1960-61 Op. Att'y Gen. p. 586.

Exemption extends only to license fees and taxes imposed for conducting business or peddling. — Person holding a certificate of exemption issued in accordance with terms of the veteran's exemption was not exempt from payment of any regulatory fee, but only from license fees or taxes imposed for conducting business or peddling. 1945-47 Op. Att'y Gen. p. 484.

Exemption is inapplicable to license taxes imposed for regulatory purposes. 1952-53 Op. Att'y Gen. p. 523.

No application to regulatory fee. — Veteran's certificate of exemption does not apply to the regulatory fee imposed on wholesale fish dealers. 1945-47 Op. Att'y Gen. p. 484.

Law is not designed to exempt a veteran from a regulatory license; the exemption applies primarily to revenue measures. 1948-49 Op. Att'y Gen. p. 428.

Exemption inapplicable to ad valorem taxes. — Exemption applies to business licenses only; there is no provision of law for exemption of ad valorem taxes to veterans. 1948-49 Op. Att'y Gen. p. 307.

Merchandise carried in stock by one operating under a disabled veteran's business license is not exempt from ad valorem taxes. 1948-49 Op. Att'y Gen. p. 303.

RESEARCH REFERENCES

Am. Jur. 2d. — 60 Am. Jur. 2d, Peddlers, Solicitors, and Transient Dealers, §§ 86, 88.

C.J.S. — 39A C.J.S., Hawkers and Peddlers, § 9.

ALR. — Reasonableness of amount of license fee exacted of peddlers or transient merchants, 39 ALR 1385.

43-12-2. Qualifications; proof of blindness, handicap, or disability.

(a) No person shall be entitled to an exemption from occupation taxes, administrative fees, or regulatory fees which would otherwise be required to peddle, conduct business, or practice the professions or semiprofessions under this chapter until it has been made to appear to the issuing authority that the person making application therefor is a resident of this state and that the income of such person is such that he or she is not liable for the payment of state income taxes.

(b) Blind persons must furnish satisfactory proof of their blindness to the issuing authority.

(c) A war veteran must furnish satisfactory proof that he or she has a physical disability which is disabling to the extent of 10 percent or more; that his or her service in the armed forces of the United States was terminated under conditions other than dishonorable; and that his or her service or some part thereof was rendered during a war period as defined by an act of the Congress of the United States, approved March 20, 1933, entitled "An Act to Maintain the Credit of the United States,"

and commonly known as Public Law No. 2, 73rd Congress; or that some part of his or her service was rendered on or after December 7, 1941, and before December 31, 1946; or that some part of his or her service was rendered on or after June 27, 1950, and before January 31, 1955; or that some part of his or her service was rendered on or after August 5, 1964, and before May 8, 1975. Proof of such 10 percent disability shall be established upon the written certificate of two physicians as to such disability, or by a letter or other written evidence from the United States Department of Veterans Affairs or the Department of Veterans Service stating the degree of disability, or by written evidence from the branch of the armed forces of the United States in which such veteran served.

(d) A veteran of peace-time service in the United States armed forces must furnish proof that he or she has a physical disability to the extent of 25 percent or more incurred in the line of duty during the period of such service by a letter or other evidence from the United States Department of Veterans Affairs or the Department of Veterans Service stating the degree of disability or by written evidence from the branch of the armed forces of the United States in which such veteran served and that his or her service in the armed forces of the United States was terminated under conditions other than dishonorable. (Ga. L. 1935, p. 163, § 1; Ga. L. 1943, p. 617, § 2; Ga. L. 1947, p. 1163, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 431, § 3; Ga. L. 1983, p. 667, § 1; Ga. L. 1990, p. 45, § 1; Ga. L. 1995, p. 1302, § 13; Ga. L. 1996, p. 1268, § 1; Ga. L. 2005, p. 1480, § 1/HB 442.)

OPINIONS OF THE ATTORNEY GENERAL

Exemption available only in years when individual is not liable for state income taxes. — Disabled veteran otherwise qualified for exemption from license taxes cannot be deprived of exemption during any year in which the veteran is not liable for state income taxes; on the other hand, the veteran is not exempt from payment of license taxes in any year for which the veteran is liable for payment of state income taxes. 1957 Op. Att'y Gen. p. 287.

Any veteran who paid state income taxes for previous year is ineligible for such a license. 1965-66 Op. Att'y Gen. No. 66-103.

Exemption inapplicable to regulatory statute charging fee to defray enforcement expenses. — Provisions applicable to veterans do not apply to a regulatory statute wherein fee is not charged to produce revenue but to defray

expenses of enforcement of rules and regulations. 1957 Op. Att'y Gen. p. 145.

Payment for licenses for sale of beer and wine. — In no event would a veteran be exempt from payment of licenses for sale of beer and wine; licenses levied for the sale of beer and wine are regulatory in character. 1957 Op. Att'y Gen. p. 338.

Exemption is inapplicable to commercial fisherman's license required by game and fish laws. 1957 Op. Att'y Gen. p. 145.

Procedure for establishing qualification for license. — If a war veteran has a 10 percent disability, the veteran is entitled to license upon producing certificate of two physicians or a letter from the veteran's branch of service which substantiates the veteran's claim of disability; also, a peacetime veteran with a 25 percent service-connected disability may es-

establish a claim by a letter from the veteran's branch of service, rather than a letter from the Veterans Administration. 1965-66 Op. Att'y Gen. No. 66-103.

War veterans with 10 percent disability entitled to exemption. 1948-49 Op. Att'y Gen. p. 309.

Exemption applies to business licenses only and not to ad valorem taxes. 1948-49 Op. Att'y Gen. p. 307.

Certificate may cover interrelated business. — Former Code 1933, § 84-2011 (see O.C.G.A. § 43-12-1) limited veteran to one independent business license exemption; if a veteran was operating an interrelated business, such interrelated business naturally would come under the exemption. 1948-49 Op. Att'y Gen. p. 309.

RESEARCH REFERENCES

ALR. — Reasonableness of amount of license fee exacted of peddlers or transient merchants, 39 ALR 1385.

43-12-3. Application for certificate of eligibility; ten-year period of validity.

All persons within the groups enumerated in Code Section 43-12-1 seeking a certificate of exemption from the payment of occupation taxes, administrative fees, or regulatory fees for peddling, conducting a business, or practicing a profession or semiprofession must first make application to the judge of the probate court of the county in which he or she resides for a certificate of eligibility. Each applicant shall make an affidavit before the judge of the probate court that he or she is not subject to payment of any income taxes to this state. Upon receipt of the evidence required in Code Section 43-12-2 and the execution of the affidavit required by this Code section, the judge of the probate court shall issue a certificate of eligibility stating that the applicant has furnished the proof required for the issuance of a certificate of exemption required by the commissioner of veterans service. Such certificate of eligibility shall be valid for a period of ten years from the date of issue. (Ga. L. 1953, Nov.-Dec. Sess., p. 431, § 4; Ga. L. 1971, p. 348, § 1; Ga. L. 1983, p. 1401, § 14; Ga. L. 1996, p. 1268, § 1; Ga. L. 2010, p. 202, § 1/HB 128.)

The 2010 amendment, effective July 1, 2010, added the last sentence.

Editor's notes. — Ga. L. 1983, p. 1401, § 1, not codified by the General Assembly, provided: "It is the intent of this Act to

implement certain changes required by Article IV, Section V, Paragraph I, subparagraph (b) of the [1976] Constitution of the State of Georgia." See Ga. Const. 1983, Art. IV, Sec. V, Para. I.

OPINIONS OF THE ATTORNEY GENERAL

Exemption is inapplicable to regulatory statutes charging fee to defray enforcement expenses. 1957 Op. Att'y Gen. p. 145.

Exemptions are inapplicable to commercial fisherman's license required by game and fish laws. 1957 Op. Att'y Gen. p. 145.

43-12-4. Description of proposed business.

All persons eligible for a certificate of exemption to be issued by the commissioner of veterans service shall state in their application filed with the commissioner of veterans service the kind of business to be operated and the place where such business is proposed to be carried on; and only the business described in the application shall be exempt from the payment of state, county, and municipal business or occupation taxes or administrative fees and regulatory fees imposed by local governments. No person shall operate in his or her own name any other business than that described in his or her application filed with the commissioner of veterans service. (Ga. L. 1953, Nov.-Dec. Sess., p. 431, § 7; Ga. L. 1971, p. 348, § 1; Ga. L. 1983, p. 1401, § 15; Ga. L. 1996, p. 1268, § 1.)

Editor's notes. — Ga. L. 1983, p. 1401, § 1, not codified by the General Assembly, provided: "It is the intent of this Act to implement certain changes required by Article IV, Section V, Paragraph I, subparagraph (b) of the [1976] Constitution of the State of Georgia." See Ga. Const. 1983, Art. IV, Sec. V, Para. I.

43-12-5. Certificate of eligibility as prima-facie evidence of right to a certificate of exemption; requirement of additional proof; rules and regulations as to certificates of exemption.

The certificates of eligibility issued by any of the judges of the probate courts of this state shall be prima-facie evidence of the right of the holder thereof to a certificate of exemption to be issued by the commissioner of veterans service. However, the commissioner of veterans service may require additional proof when such commissioner has reason to believe that any applicant is not entitled to the exemptions provided for in this chapter. The commissioner of veterans service shall make and prescribe reasonable rules and regulations not inconsistent with this chapter governing the issuance of certificates of exemption. (Ga. L. 1935, p. 163, § 3; Ga. L. 1953, Nov.-Dec. Sess., p. 431, § 5; Ga. L. 1971, p. 348, § 1; Ga. L. 1983, p. 1401, § 16; Ga. L. 1996, p. 1268, § 1.)

Editor's notes. — Ga. L. 1983, p. 1401, § 1, not codified by the General Assembly, provided: "It is the intent of this Act to implement certain changes required by Article IV, Section V, Paragraph I, subparagraph (b) of the [1976] Constitution of the State of Georgia." See Ga. Const. 1983, Art. IV, Sec. V, Para. I.

JUDICIAL DECISIONS

Cited in Lord v. State Bd. of Registration for Professional Eng'rs & Surveyors, 129 Ga. App. 190, 199 S.E.2d 122 (1973).

43-12-6. Cancellation or suspension of certificates of exemption.

The commissioner of veterans service may cancel or suspend certificates of exemption at any time when it shall appear that the holder has become physically or financially ineligible to claim the exemption, that the certificate of exemption was procured through fraud or mistake, or that the person to whom such certificate was issued has permitted another to enjoy the benefits of such exemption. Any suspension or cancellation of the certificate of exemption may be made only after affording the person concerned an opportunity to be heard either by counsel or pro se. Service of ten days' written notice of the time and place the commissioner of veterans service expects to hear and determine the question of such suspension or cancellation shall be deemed sufficient notice when delivered by registered or certified mail or statutory overnight delivery or by any sheriff, deputy sheriff, marshal, constable, or police officer of any county or municipality of this state; and evidence of such service shall be deemed sufficient on proof of the receipt by the person concerned of the registered or certified item in which notice has been mailed or the return of service of any other officer. (Ga. L. 1935, p. 163, §§ 3, 4; Ga. L. 1953, Nov.-Dec. Sess., p. 431, § 6; Ga. L. 1971, p. 348, § 1; Ga. L. 1983, p. 1401, § 17; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 1983, p. 1401, § 1, not codified by the General Assembly, provided: "It is the intent of this Act to implement certain changes required by Article IV, Section V, Paragraph I, subparagraph (b) of the [1976] Constitution of the State of Georgia." See Ga. Const. 1983, Art. IV, Sec. V, Para. I.

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

JUDICIAL DECISIONS

Cited in *Schwindler v. State*, 261 Ga. App. 30, 581 S.E.2d 619 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the provisions, opinions under former Code 1933, Ch. 84-20 as it read prior to revision of Ga. L. 1953, Nov.-Dec. Sess., p. 431 are included in the annotations for this Code section.

Certificate may not be revoked for conviction of selling alcoholic or malt beverages without a license. 1945-47 Op. Att'y Gen. p. 483.

RESEARCH REFERENCES

ALR. — Reasonableness of amount of license fee exacted of peddlers or transient merchants, 39 ALR 1385.

43-12-7. Payment of income taxes by applicants for exemption.

The commissioner of veterans service, upon request of the mayor or other executive officer of any municipality of this state, shall furnish such municipality with information as to the payment of income taxes by applicants for exemption under this chapter. (Ga. L. 1943, p. 617, § 5; Ga. L. 1953, Nov.-Dec. Sess., p. 431, § 9; Ga. L. 1971, p. 348, § 1; Ga. L. 1983, p. 1401, § 18.)

Editor's notes. — Ga. L. 1983, p. 1401, § 1, not codified by the General Assembly, provided: "It is the intent of this Act to implement certain changes required by Article IV, Section V, Paragraph I, subparagraph (b) of the [1976] Constitution of the State of Georgia." See Ga. Const. 1983, Art. IV, Sec. V, Para. I.

43-12-8. Restrictions on businesses, professions, or semiprofessions which may be engaged in.

No person qualifying for a certificate of exemption under this chapter shall be licensed to peddle any item, conduct any business, or practice any profession or semiprofession which is prohibited by law. No person shall be licensed under this chapter to deal in or peddle intoxicating drinks; to operate a billiard, pool, or other table of like character; to deal in futures; or to carry on a business of pawnbroker or auctioneer. (Code 1868, § 569; Code 1873, § 534; Code 1882, § 534; Ga. L. 1882-83, p. 64, § 1; Ga. L. 1889, p. 50, § 1; Ga. L. 1890-91, p. 63, § 1; Ga. L. 1895, p. 19, § 1; Civil Code 1895, § 1642; Ga. L. 1897, p. 24, § 1; Ga. L. 1898, p. 46, § 1; Civil Code 1910, § 1888; Ga. L. 1918, p. 116, § 1; Ga. L. 1919, p. 91, § 1; Code 1933, § 84-2011; Ga. L. 1953, Nov.-Dec. Sess., p. 431, § 10.)

43-12-9. Utilization of certificate of exemption by person other than lawful holder.

No person receiving a certificate of exemption from the commissioner of veterans service shall allow the use of his or her name or the use of his or her certificate by any other person for carrying on any business or profession in this state for the purpose of avoiding any tax levied by the state or any county or municipality in this state. Any person allowing his or her certificate of exemption to be used in violation of this Code section shall be subject to having his or her certificate canceled by the commissioner of veterans service. Any person attempting to operate any business or profession under a certificate of exemption issued under

this chapter who is not the true and lawful holder of such certificate shall be guilty of a misdemeanor. (Code 1868, § 569; Code 1873, § 534; Code 1882, § 534; Ga. L. 1882-83, p. 64, § 1; Ga. L. 1889, p. 50, § 1; Ga. L. 1890-91, p. 63, § 1; Ga. L. 1895, p. 19, § 1; Civil Code 1895, § 1642; Ga. L. 1897, p. 24, § 1; Ga. L. 1898, p. 46, § 1; Civil Code 1910, § 1888; Ga. L. 1918, p. 116, § 1; Ga. L. 1919, p. 91, § 1; Code 1933, § 84-2011; Ga. L. 1935, p. 163, § 3; Ga. L. 1943, p. 617, § 4; Ga. L. 1953, Nov.-Dec. Sess., p. 431, § 8; Ga. L. 1971, p. 348, § 1; Ga. L. 1983, p. 1401, § 19; Ga. L. 1996, p. 1268, § 1.)

Editor's notes. — Ga. L. 1983, p. 1401, § 1, not codified by the General Assembly, provided: "It is the intent of this Act to implement certain changes required by

Article IV, Section V, Paragraph I, subparagraph (b) of the [1976] Constitution of the State of Georgia." See Ga. Const. 1983, Art. IV, Sec. V, Para. I.

CHAPTER 12A

IGNITION INTERLOCK DEVICE PROVIDERS

Sec.

43-12A-1. Short title.

43-12A-2. Definitions.

43-12A-3. License to operate a provider center.

43-12A-4. Requirements for operating a provider center.

43-12A-5. Provider not to operate under any name deceptively similar to another; franchising or licensing to another licensed provider; restrictions on cer-

Sec.

tain individuals having stake in provider center.

43-12A-6. Acts disqualifying person from operating provider center or engaging in practice of providing, installing, or monitoring ignition interlock devices.

43-12A-7. Issuance and renewal of license.

43-12A-8. Suspension of license.

43-12A-9. Rules and regulations.

Cross references. — Ignition interlock devices as probation condition, § 42-8-110. Court ordered installation of ignition interlock devices, § 42-8-111. Specifying provider for ignition interlock device, § 42-8-114.

Administrative rules and regulations. — Ignition interlock devices, Official Compilation of the Rules and Regula-

tions of the State of Georgia, Department of Driver Services, Driver License Services, Chapter 375-3-6.

DUI Alcohol or drug use risk reduction program, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Driver Services, Driver Training and Driver Improvement, Chapter 375-5-6.

43-12A-1. Short title.

This chapter shall be known and may be cited as the “Ignition Interlock Device Providers Act.” (Code 1981, § 43-12A-1, enacted by Ga. L. 2006, p. 439, § 1/HB 276.)

43-12A-2. Definitions.

As used in this chapter, the term:

(1) “Commissioner” means the commissioner of driver services.

(2) “Department” means the Department of Driver Services acting directly or through its duly authorized officers and agents.

(3) “Ignition interlock device” means a constant monitoring device certified by the commissioner which prevents a motor vehicle from being started at any time without first determining the equivalent blood alcohol concentration of the operator through the taking of a deep lung breath sample. The system shall be calibrated so that the motor vehicle may not be started if the blood alcohol concentration of the operator, as measured by the device, exceeds 0.02 grams or if the sample is not a sample of human breath.

(4) "Provider center" means a facility established for the purpose of providing and installing ignition interlock devices when their use is required by or as a result of an order of a court. (Code 1981, § 43-12A-2, enacted by Ga. L. 2006, p. 439, § 1/HB 276.)

43-12A-3. License to operate a provider center.

No person shall operate a provider center or engage in the practice of providing, installing, or monitoring ignition interlock devices unless a license therefor has been secured from the department. (Code 1981, § 43-12A-3, enacted by Ga. L. 2006, p. 439, § 1/HB 276.)

43-12A-4. Requirements for operating a provider center.

(a) Every person who desires to operate a provider center shall meet the following requirements:

(1) Maintain an established place of business in the state which is open to the public;

(2) Maintain a general liability policy of insurance, including products and completed operations, with not less than \$50,000.00 of combined single limits, with an insurance carrier authorized by the Commissioner of Insurance to write policies in the state. Evidence of such insurance coverage, in the form of a certificate from the insurance carrier, shall be filed with the department; and such certificate shall stipulate that the insurance shall not be canceled except upon ten days' prior written notice to the department;

(3) Provide a continuous surety bond in the principal sum of \$10,000.00 for the protection of the contractual rights of individuals required to maintain an ignition interlock device in such form as will meet with the approval of the department and written by a company authorized to do business in this state; provided, however, that the aggregate liability of the surety for all breaches of the condition of the bond in no event shall exceed the principal sum of \$20,000.00 per location, and a single bond at such rate for all locations separately licensed and operated by the same person may be provided in satisfaction of this paragraph. The surety on any such bond may cancel such bond on giving 30 days' notice thereof in writing to the department and shall be relieved of liability for any breach of any condition of the bond which occurs after the effective date of cancellation;

(4) Have the equipment and knowledge necessary to provide, install, and monitor ignition interlock devices as prescribed by the department; and

(5) Pay to the department an application fee of \$250.00.

(b) The department shall conduct a records check for any applicant for certification as a provider center operator. Each applicant shall submit two sets of classifiable fingerprints to the department. The department shall transmit both sets of fingerprints to the Georgia Crime Information Center, which shall submit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain one set of fingerprints and promptly conduct a search of state records. After receiving a report from the Georgia Crime Information Center and the Federal Bureau of Investigation, the department shall determine whether the applicant may be licensed. The applicant shall be responsible for any fee or other charge allowed by law or rule or regulation promulgated by the department, the Georgia Crime Information Center, or the Federal Bureau of Investigation for the submission, processing, and review of such fingerprints.

(c) No applicant shall be licensed or certified who does not meet the requirements set forth in Code Section 43-12A-6. (Code 1981, § 43-12A-4, enacted by Ga. L. 2006, p. 439, § 1/HB 276.)

43-12A-5. Provider not to operate under any name deceptively similar to another; franchising or licensing to another licensed provider; restrictions on certain individuals having stake in provider center.

(a) No provider center shall be permitted to use, adopt, or conduct any business under any name that is like or deceptively similar to any name of a Georgia corporation registered with the Secretary of State.

(b) This Code section shall not prohibit the franchising or licensing of any part or all of the name of a provider center by the owner of the rights therein to another licensed provider center.

(c) A judicial officer, probation officer, law enforcement officer, or other officer or employee of a court or any person employed by a private company which has contracted to provide private probation services for misdemeanor cases, or any employee of the Department of Driver Services or the Department of Behavioral Health and Developmental Disabilities, and any immediate family member thereof shall be prohibited from owning, operating, being employed by or acting as an agent or servant for, or having a financial interest in any provider center. (Code 1981, § 43-12A-5, enacted by Ga. L. 2006, p. 439, § 1/HB 276; Ga. L. 2009, p. 453, § 3-2/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Behavioral Health and Developmental Dis-

abilities" for "Department of Human Resources" in subsection (c).

43-12A-6. Acts disqualifying person from operating provider center or engaging in practice of providing, installing, or monitoring ignition interlock devices.

Every person who desires to operate a provider center or to engage in the practice of providing, installing, or monitoring ignition interlock devices:

(1) Shall not have knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of a business or profession licensed under this title or on any document connected therewith; or practiced fraud or deceit or intentionally made any false statement in obtaining a license to practice the licensed business or profession; or made a false statement or deceptive registration with the board;

(2) Shall not have been convicted of a second or subsequent violation of Code Section 40-6-391 within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained;

(3) Shall not have been convicted of any felony or of any crime involving theft, fraud, violence, or moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States. As used in this paragraph, the term "felony" shall mean any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere; and the term "conviction" shall mean a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;

(4) Shall not have been arrested, charged, and sentenced for the commission of any felony, or any crime involving theft, fraud, violence, or moral turpitude, where:

(A) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(B) An adjudication of guilt or sentence was otherwise withheld or not entered on the charge, except with respect to a plea of nolo contendere.

The order entered pursuant to the provisions of Article 3 of Chapter 8 of Title 42, relating to probation of first offenders, or other first offender treatment shall be conclusive evidence of arrest and sentencing for such crime;

(5) Shall submit at least one set of classifiable electronically recorded fingerprints to the department in accordance with the fingerprint system of identification established by the director of the

Federal Bureau of Investigation. The department shall transmit the fingerprints to the Georgia Crime Information Center, which shall submit the fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and promptly conduct a search of state records based upon the fingerprints. After receiving the report from the Georgia Crime Information Center and the Federal Bureau of Investigation, the department shall determine whether the applicant may be certified; and

(6) Shall be a United States citizen, or if not a citizen, present federal documentation verified by the United States Department of Homeland Security to be valid documentary evidence of lawful presence in the United States under federal immigration law. (Code 1981, § 43-12A-6, enacted by Ga. L. 2006, p. 439, § 1/HB 276; Ga. L. 2010, p. 932, § 27/HB 396.)

The 2010 amendment, effective July 1, 2010, deleted “and” at the end of paragraph (3); substituted a semicolon for a period at the end of paragraph (4); and added paragraphs (5) and (6).

43-12A-7. Issuance and renewal of license.

(a) The department shall issue a license certificate to each provider center operator when such person has met the qualifications required under this chapter. Each provider center shall be required to have a separate license for each location, but mobile units operating out of a particular licensed location need not be separately licensed.

(b) All licenses issued to operators of provider centers pursuant to this chapter shall be valid for four years from the date of issuance unless sooner canceled, suspended, or revoked under Code Section 43-12A-8. All licenses shall be renewed through the department as provided in subsection (d) of this Code section and shall be valid for four years from the date of renewal.

(c) The license of each provider center operator may be renewed subject to the same conditions as the original license and upon payment of a fee of \$100.00.

(d) All applications for renewal of a provider center operator’s license shall be on a form prescribed by the department and must be filed with the department not more than 60 days nor fewer than ten days preceding the expiration date of the license to be renewed. (Code 1981, § 43-12A-7, enacted by Ga. L. 2006, p. 439, § 1/HB 276.)

43-12A-8. Suspension of license.

The department may cancel, suspend, revoke, or refuse to renew any provider center’s license upon good cause being shown and after ten days’ notice to the license holder if:

(1) The department is satisfied that the licensee fails to meet the requirements to receive or hold a license under this chapter;

(2) The licensee permits fraud or engages in fraudulent practices, with reference to either the applicant or the department, or induces or countenances fraud or fraudulent practices on the part of any applicant for a driver's license or permit;

(3) The licensee fails to comply with this chapter or any rule of the department made pursuant thereto;

(4) The licensee represents himself or herself as an agent or employee of the department or uses advertising designed to lead, or which would reasonably have the effect of leading, persons to believe that such licensee is in fact an employee or representative of the department;

(5) The licensee or any employee or agent of the licensee directly or indirectly solicits business by personal solicitation on public property or in any department, agency, or office of the state which involves the administration of any law relating to motor vehicles, whether by telephone, mail, or electronic communications. A violation of this paragraph shall be a misdemeanor. Advertising in any mass media, including, but not limited to, newspapers, radio, television, magazines, or telephone directories, by a provider center shall not be considered a violation of this paragraph; or

(6) The driver's license of the licensee has been canceled, suspended, or revoked. (Code 1981, § 43-12A-8, enacted by Ga. L. 2006, p. 439, § 1/HB 276.)

43-12A-9. Rules and regulations.

(a) The commissioner is authorized to prescribe, by rule, standards for the eligibility, conduct, and equipment required for a person to be licensed to operate a provider center and to adopt other reasonable rules and regulations to carry out this chapter. Notwithstanding the foregoing, violations that are minor in nature and committed by a person, firm, or corporation shall be punished only by a written reprimand unless the person, firm, or corporation fails to remedy the violation within 30 days, in which case an administrative fine, not to exceed \$250.00, may be issued.

(b) The commissioner shall have the authority to assess, after a hearing, an administrative fine not to exceed \$1,000.00 per violation against any provider center, agent, or employee that fails to comply with any requirement imposed by or pursuant to this chapter.

(c) The hearing and any administrative review thereof shall be conducted in accordance with the procedure for contested cases under

Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Any person, firm, or corporation who has exhausted all administrative remedies available and who is aggrieved or adversely affected by a final order or action of the commissioner shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50. All fines recovered under this Code section shall be paid into the state treasury. The commissioner may file in the superior court:

(1) Wherein the person under order resides;

(2) If such person is a corporation, in the county wherein the corporation maintains its principal place of business; or

(3) In the county wherein the violation occurred

a certified copy of a final order of the commissioner, whether unappealed from or affirmed upon appeal, whereupon the court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and proceedings in relation thereto shall thereafter be the same as though the judgment had been rendered in an action duly heard and determined by the court. The penalty prescribed in this Code section shall be concurrent, alternative, and cumulative with any and all other civil, criminal, or alternative rights, remedies, forfeitures, or penalties provided, allowed, or available to the commissioner with respect to any violation of this chapter or any order, rules, or regulations promulgated pursuant to this chapter. (Code 1981, § 43-12A-9, enacted by Ga. L. 2006, p. 439, § 1/HB 276.)

CHAPTER 13

INSTRUCTORS IN DRIVER TRAINING AND
OPERATORS OF DRIVER TRAINING SCHOOLS

Sec.		Sec.	
43-13-1.	Short title.		training school instructors
43-13-2.	Definitions.		qualified to teach alcohol and
43-13-3.	License requirement.		drug course; fingerprinting re-
43-13-4.	(For effective date, see note.)		quirement; citizenship require-
	Qualifications of driver train-		ment.
	ing school operators.	43-13-7.	Cancellation, suspension, revo-
43-13-4.1.	Business names of driver		cation, or nonrenewal of li-
	training schools and commer-		censes.
	cial driver training schools.	43-13-8.	Rules and regulations; penal-
43-13-5.	Qualifications of driver train-		ties; judicial review; judg-
	ing school instructors.		ments.
43-13-6.	Issuance of licenses to qualified	43-13-9.	Disposition of funds.
	applicants; expiration and re-	43-13-10.	Exceptions to operation of
	newal of licenses.		chapter.
43-13-6.1.	Special licenses for driver	43-13-11.	Penalty.

Cross references. — Driver education course accepted for Carnegie unit elective credits, § 20-2-151.2. Reduction in insurance premiums for completing and availability of driving courses, § 33-9-42. Driv-

ers' licenses generally, T. 40, C. 5. Driver improvement programs and clinics for persons whose drivers' licenses have been suspended or revoked, § 40-5-80 et seq.

JUDICIAL DECISIONS

Valid purpose. — Purpose of Ga. L. 1968, p. 436 (see O.C.G.A. Ch. 13, T. 43), to improve quality of driving instruction received by prospective drivers in the State of Georgia and to protect the public

from unqualified commercial driving programs, is clearly a legitimate and appropriate exercise of the state's police power. *Milner v. Burson*, 320 F. Supp. 706 (N.D. Ga. 1970).

OPINIONS OF THE ATTORNEY GENERAL

Persons and businesses which must comply with law. — Person or business entity must comply with this chapter if such person or business entity gives instructions for hire and those instructions prepare an applicant for license examination required for a class three, four, or five license. 1974 Op. Att'y Gen. No. 74-101 (see O.C.G.A., Ch. 13, T. 43).

Fact that student holds permit to drive does not exempt instructor. — Fact that student holds a permit allowing the student to drive vehicles encompassed

within the three, four, and five license classes does not exempt instructing person or business entity from requirements of law if such instructing person or business entity offers instructions which aid the applicant in passing the license examination required for a class three, four, or five license. 1974 Op. Att'y Gen. No. 74-101.

Business instructing licensed drivers is not subject to provisions of law. — Corporation engaged in business of giving instruction for hire in driving mo-

tor vehicles to persons who are already licensed to drive is not subject to provisions of this chapter. 1972 Op. Att'y Gen. No. 72-135 (see O.C.G.A. Ch. 13, T. 43).

School's vehicles not subject to inspection more than once a year. — Department of Public Safety is not autho-

rized to inspect a school's vehicles more often than annual safety inspection. 1968 Op. Att'y Gen. No. 68-278.

Administrative Procedure Act applies when applicant is denied a license for school or instructor's permit. 1968 Op. Att'y Gen. No. 68-278.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S.,

Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

43-13-1. Short title.

This chapter shall be known and may be cited as "The Driver Training School and Commercial Driver Training School License Act." (Ga. L. 1968, p. 436, § 11; Ga. L. 1999, p. 81, § 43; Ga. L. 2003, p. 796, § 9.)

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 43, 146.

43-13-2. Definitions.

(a) As used in this chapter, the term:

(1) "Commercial driver training school," except as provided in subsection (b) of this Code section, means any person, partnership, limited liability company, or corporation giving driving instruction for hire to ten or more persons per calendar year for the purpose of assisting such persons to meet the requirements for licensed driving of Class A or Class B motor vehicles in this state.

(2) "Department" means the Department of Driver Services acting directly or through its duly authorized officers and agents.

(3) "Driver training course" means a course including but not limited to classroom instruction; behind-the-wheel instruction; in-

struction by means of simulation training; and defensive driving, distance learning, or virtual driver training courses approved by the Department of Driver Services for the purpose of assisting persons to meet the requirements for licensed driving of Class C or Class M motor vehicles in this state.

(4) "Driver training school," except as provided in subsection (b) of this Code section, means any person, partnership, limited liability company, or corporation giving driving instruction for hire to ten or more persons per calendar year for the purpose of assisting such persons to meet the requirements for licensed driving of Class C or Class M motor vehicles in this state, except for motorcycle operator safety training programs conducted by or on behalf of the Department of Driver Services pursuant to Chapter 15 of Title 40. The term shall also include any public school system offering a driver training course during the regular school day as part of a student curriculum at no cost to the student.

(5) "Driver's license examiners" means examiners appointed by the Department of Driver Services for the purpose of giving driver's license examinations.

(6) "Motor vehicle" means every vehicle which is self-propelled upon, or by which any person or property is or may be transported or drawn upon, a public highway except devices used exclusively upon stationary rails or tracks.

(7) "Person" means every natural person, firm, partnership, limited liability company, association, corporation, or school.

(b) The terms "commercial driver training school" as defined in paragraph (2) of subsection (a) of this Code section and "driver training school" as defined in paragraph (4) of subsection (a) of this Code section shall not include:

(1) Hospitals and state licensed rehabilitation centers offering a driver training course for the purpose of rehabilitating persons to maintain or obtain a Class C license; provided, however, that such facilities shall be required to file a memorandum of understanding with the commissioner of driver services in the prescribed format of the department;

(2) Any person, partnership, limited liability company, or corporation offering a for-hire defensive driving safety course for the purpose of providing training to assist persons to obtain a Class C or Class M license through means of behind-the-wheel training, simulator training, or offering a defensive driving safety course consisting of less than 30 hours of classroom and six hours of behind-the-wheel training. These entities shall be required to obtain a limited license

as a driver training school, register and identify all of its vehicles, and shall become subject to the same insurance requirements for a driver training school as outlined in Code Section 43-13-4. Limited driver training schools offering classroom or simulator training only will not be required to comply with the liability insurance requirements outlined in Code Section 43-13-4. The commissioner of driver services shall promulgate and adopt rules and regulations for the qualifications and establish the application fees for the driver training school limited license. The commissioner shall issue the driver training school limited license if the application is complete and the applicant demonstrates compliance with the laws of this state and the rules and regulations of the commissioner regarding insurance and safety. The driver training school limited license shall be valid for a period of four years; or

(3) Any person, partnership, limited liability company, or corporation which offers occasional driver training instruction. These entities may obtain a temporary driver training permit for a period of seven consecutive days beginning and ending on the dates specified on the face of the permit. Temporary driver training permits shall be obtained by schools, individuals, or other entities which offer occasional driver training instruction that do not maintain a permanent classroom located within the state. The fee for each temporary driver training permit shall be \$100.00 per week and \$25.00 for each vehicle. No temporary driver training permit shall be issued without the commissioner of driver services having first received satisfactory proof that the applicant meets the insurance requirements as defined in Code Section 43-13-4 and the vehicle and safety requirements as set forth in the rules and regulations of the commissioner. A temporary driver training permit shall be displayed in a conspicuous location at any time instruction is being given and a copy of such permit shall be located in each vehicle that is registered for the purpose of providing instruction. (Ga. L. 1968, p. 436, § 1; Ga. L. 1993, p. 123, § 27; Ga. L. 2000, p. 951, § 12-7; Ga. L. 2003, p. 796, § 10; Ga. L. 2005, p. 60, § 43/HB 95; Ga. L. 2005, p. 334, § 25-1/HB 501; Ga. L. 2006, p. 460, § 1/HB 1252.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, “commissioner of driver services” was substituted for “commissioner of the Department of

Driver Services” in paragraphs (b)(1) and (b)(2) and “commissioner of driver services having first” was substituted for “commissioner having first” in paragraph (b)(3).

JUDICIAL DECISIONS

Cited in *Milner v. Burson*, 320 F. Supp. 706 (N.D. Ga. 1970); *Milner v. Burson*, 470 F.2d 870 (5th Cir. 1972).

43-13-3. License requirement.

No person shall operate a driver training school, operate a commercial driver training school, or engage in the business of giving instruction for hire to ten or more persons per calendar year in the driving of motor vehicles or in the preparation of an applicant for examination given by driver's license examiners for a driver's license or permit unless a license, a limited license, or a temporary driver training permit therefor has been secured from the department. Separate licenses shall be required for the operation of a driver training school and a commercial driver training school. (Ga. L. 1968, p. 436, § 2; Ga. L. 2003, p. 796, § 11; Ga. L. 2006, p. 460, § 2/HB 1252.)

Cross references. — Applicability of laws relating to State Board of Education regulation of nonpublic postsecondary educational institutions, § 20-3-250.1 et seq.

JUDICIAL DECISIONS

Cited in *Milner v. Burson*, 470 F.2d 870 (5th Cir. 1972).

43-13-4. (For effective date, see note.) Qualifications of driver training school operators.

Every person who desires to operate a driver training school or a commercial driver training school shall meet the following requirements:

- (1) Be of good moral character;
- (2) Maintain an established place of business in the State of Georgia which is open to the public;
- (3) Maintain bodily injury and property damage liability insurance on motor vehicles while used in driver training instruction, insuring the liability of the driver training school, the driving instructors, and any person taking instruction, in at least the following amounts: \$100,000.00 for bodily injury to or death of one person in any one accident and, subject to such limit for one person, \$300,000.00 for bodily injury to or death of two or more persons in any one accident and the amount of \$50,000.00 for damage to property of others in any one accident. Evidence of such insurance coverage, in the form of a certificate from the insurance carrier, shall be filed with the department; and such certificate shall stipulate that the insurance shall not be canceled except upon ten days' prior written notice to the department. Such insurance shall be written by a company authorized to do business in this state;

(4) (For effective date, see note.) Provide a continuous surety company bond in the principal sum of \$10,000.00 for the protection of the contractual rights of students in such form as will meet with the approval of the department and written by a company authorized to do business in this state; provided, however, that the aggregate liability of the surety for all breaches of the condition of the bond in no event shall exceed the principal sum of \$10,000.00 per location, and a single bond at such rate for all schools operated by the same person may be provided in satisfaction of this paragraph. The surety on any such bond may cancel such bond on giving 30 days' notice thereof in writing to the department and shall be relieved of liability for any breach of any condition of the bond which occurs after the effective date of cancellation. If at any time said bond is not valid and in force, the license of the school or program shall be deemed suspended by operation of law until a valid surety company bond is again in force;

(5) Have the equipment necessary to the giving of proper instruction in the operation of motor vehicles as prescribed by the department;

(6) Pay to the department an application fee for the approval of driver training schools and instructors, commercial driver training schools and instructors, and limited license driver training schools and instructors. The amount of this fee shall be established by the commissioner of driver services and shall, as best as the commissioner shall determine, approximate the expense incurred by the department in consideration of the license applications. These licenses and each renewal thereof shall be valid for a period of four years unless suspended or revoked prior to the expiration of that time period;

(7) Submit at least one set of classifiable electronically recorded fingerprints to the department in accordance with the fingerprint system of identification established by the director of the Federal Bureau of Investigation. The department shall transmit the fingerprints to the Georgia Crime Information Center, which shall submit the fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and promptly conduct a search of state records based upon the fingerprints. After receiving the report from the Georgia Crime Information Center and the Federal Bureau of Investigation, the department shall determine whether the applicant may be certified; and

(8) Be a United States citizen, or if not a citizen, present federal documentation verified by the United States Department of Homeland Security to be valid documentary evidence of lawful presence in the United States under federal immigration law. (Ga. L. 1968, p.

436, § 3; Ga. L. 2003, p. 796, § 12; Ga. L. 2006, p. 460, § 3/HB 1252; Ga. L. 2010, p. 932, § 28/HB 396; Ga. L. 2011, p. 355, § 20/HB 269.)

Delayed effective date. — Paragraph (4), as set out above, becomes effective January 1, 2012. For version of paragraph (4) in effect until January 1, 2012, see the 2011 amendment note.

The 2010 amendment, effective July 1, 2010, deleted “and” at the end of para-

graph (5); substituted a semicolon for a period at the end of paragraph (6); and added paragraphs (7) and (8).

The 2011 amendment, effective January 1, 2012, substituted “\$10,000.00” for “\$2,500.00” twice in the first sentence of paragraph (4).

JUDICIAL DECISIONS

Cited in *Milner v. Burson*, 320 F. Supp. 706 (N.D. Ga. 1970); *Milner v. Burson*, 470 F.2d 870 (5th Cir. 1972).

OPINIONS OF THE ATTORNEY GENERAL

Definition of “place of business”. — “Place of business” has been defined by Georgia appellate court as a “place where a calling for purpose of gaining or profit is

conducted,” or a place where public is invited to come to engage services or buy products of offering party. 1968 Op. Att’y Gen. No. 68-278.

RESEARCH REFERENCES

ALR. — Validity of statute or ordinance which requires liability or indemnity insurance or bond as condition of license for

conduct of business or profession, 120 ALR 950.

43-13-4.1. Business names of driver training schools and commercial driver training schools.

(a) No driver training school or commercial driver training school shall be permitted to use, adopt, or conduct any business under any name that is like or deceptively similar to any name of a Georgia corporation registered with the Secretary of State.

(b) This Code section shall not prohibit the franchising or licensing of any part or all of the name of a driver training school or commercial driver training school by the owner of the rights therein to another licensed commercial driver training school. (Code 1981, § 43-13-4.1, enacted by Ga. L. 2003, p. 796, § 13; Ga. L. 2006, p. 460, § 4/HB 1252.)

Cross references. — Corporate name, § 14-2-401.

43-13-5. Qualifications of driver training school instructors.

Every person who desires to qualify as an instructor for a driver training school or a commercial driver training school shall meet the following requirements:

- (1) Be of good moral character;
- (2) Present to the department evidence of credit in driver education and safety from an accredited college or university equivalent to credits in those subjects which are required of instructors in the public schools of this state or give satisfactory performance on a written, oral, performance, or combination examination administered by the department testing both knowledge of the field of driver education and skills necessary to instruct and impart driving skills and safety to students. The examination shall be administered quarterly or upon the written application of four or more prospective licensees. The examination fee shall be established by the commissioner of driver services;
- (3) Be physically able to operate safely a motor vehicle and to instruct others in the operation of motor vehicles;
- (4) Hold a valid driver's license;
- (5) Pay to the department an application fee to be established by the commissioner of driver services;
- (6) Submit at least one set of classifiable electronically recorded fingerprints to the department in accordance with the fingerprint system of identification established by the director of the Federal Bureau of Investigation. The department shall transmit the fingerprints to the Georgia Crime Information Center, which shall submit the fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and promptly conduct a search of state records based upon the fingerprints. After receiving the report from the Georgia Crime Information Center and the Federal Bureau of Investigation, the department shall determine whether the applicant may be certified; and
- (7) Be a United States citizen, or if not a citizen, present federal documentation verified by the United States Department of Homeland Security to be valid documentary evidence of lawful presence in the United States under federal immigration law. (Ga. L. 1968, p. 436, § 4; Ga. L. 1973, p. 259, § 1; Ga. L. 1994, p. 97, § 43; Ga. L. 2003, p. 796, § 14; Ga. L. 2006, p. 460, § 5/HB 1252; Ga. L. 2010, p. 932, § 29/HB 396.)

The 2010 amendment, effective July 1, 2010, deleted “and” at the end of paragraph (4); substituted a semicolon for a

period at the end of paragraph (5); and added paragraphs (6) and (7).

JUDICIAL DECISIONS

Educational requirements of Ga. L. 1968, p. 436, § 4 (see O.C.G.A. § 43-13-5) are not unreasonable since to require commercial driving instructors to present evidence of educational credit in field of driver education and safety is reasonably related to ability to teach driv-

ing skills and to achievement of purpose of Ga. L. 1968, p. 436 (see O.C.G.A. Ch. 13, T. 43). *Milner v. Burson*, 320 F. Supp. 706 (N.D. Ga. 1970).

Cited in *Milner v. Burson*, 470 F.2d 870 (5th Cir. 1972).

OPINIONS OF THE ATTORNEY GENERAL

Generally, “evidence of credit” insofar as colleges are concerned would be certified transcript from registrar or

records office of college where credits are earned. 1968 Op. Att’y Gen. No. 68-278.

43-13-6. Issuance of licenses to qualified applicants; expiration and renewal of licenses.

(a) The department shall issue a license certificate to each operator of a driver training school, to each operator of a commercial driver training school, to each driver training instructor, or to each commercial driver training instructor when the department is satisfied that such person has met the qualifications required under this chapter.

(b) All licenses issued to driver training schools, commercial driver training schools, driver training instructors, or commercial driver training instructors pursuant to this chapter shall be valid for four years from the date of issuance unless sooner canceled, suspended, or revoked under Code Section 43-13-7. All licenses shall be renewed through the department as provided in subsection (d) of this Code section and shall be valid for four years from the date of renewal.

(c) The license of each driver training school, commercial driver training school, driver training instructor, and commercial driver training instructor may be renewed subject to the same conditions as the original license and upon payment of the same fee.

(d) All applications for renewal of a driver training school’s license, commercial driver training school’s license, driver training instructor’s license, or commercial driver training instructor’s license shall be on a form prescribed by the department and must be filed with the department not more than 60 days nor less than ten days preceding the expiration date of the license to be renewed. (Ga. L. 1968, p. 436, § 5; Ga. L. 1986, p. 823, § 1; Ga. L. 1993, p. 453, § 1; Ga. L. 1997, p. 560, § 1; Ga. L. 2000, p. 951, § 12-8; Ga. L. 2003, p. 796, § 15.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2003, “commercial driver training school’s license” was substituted for “commercial driver training school license” in subsection (d).

JUDICIAL DECISIONS

Cited in *Milner v. Burson*, 470 F.2d 870 (5th Cir. 1972).

43-13-6.1. Special licenses for driver training school instructors qualified to teach alcohol and drug course; fingerprinting requirement; citizenship requirement.

(a) The commissioner shall be authorized to issue a special license to the instructor of any driver training school who is qualified to teach the alcohol and drug course prescribed in subsection (b) of Code Section 20-2-142. A driver training school shall offer such alcohol and drug course only through a qualified instructor and shall not charge a fee for such course of more than \$25.00.

(b) Each applicant shall submit at least one set of classifiable electronically recorded fingerprints to the department in accordance with the fingerprint system of identification established by the director of the Federal Bureau of Investigation. The department shall transmit the fingerprints to the Georgia Crime Information Center, which shall submit the fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and promptly conduct a search of state records based upon the fingerprints. After receiving the report from the Georgia Crime Information Center and the Federal Bureau of Investigation, the department shall determine whether the applicant may be certified.

(c) The commissioner shall not issue a special license to any applicant unless he or she is a United States citizen, or if not a citizen, he or she presents federal documentation verified by the United States Department of Homeland Security to be valid documentary evidence of lawful presence in the United States under federal immigration law. (Code 1981, § 43-13-6.1, enacted by Ga. L. 1983, p. 745, § 4; Ga. L. 1986, p. 839, § 3; Ga. L. 2010, p. 932, § 30/HB 396.)

The 2010 amendment, effective July 1, 2010, designated the existing provisions as subsection (a) and added subsections (b) and (c).

43-13-7. Cancellation, suspension, revocation, or nonrenewal of licenses.

The department may cancel, suspend, revoke, or refuse to renew any driver training school’s, commercial driver training school’s, driver training instructor’s, or commercial driver training instructor’s license

upon good cause being shown and after ten days' notice to the license holder if:

- (1) The department is satisfied that the licensee fails to meet the requirements to receive or hold a license under this chapter;
- (2) The licensee fails to keep the records required by this chapter;
- (3) The licensee permits fraud or engages in fraudulent practices, with reference to either the applicant or the department, or induces or countenances fraud or fraudulent practices on the part of any applicant for a driver's license or permit;
- (4) The licensee fails to comply with this chapter or any rule of the department made pursuant thereto;
- (5) The licensee represents himself or herself as an agent or employee of the department or license examiners or uses advertising designed to lead, or which would reasonably have the effect of leading, persons to believe that such licensee is in fact an employee or representative of the department or license examiners;
- (6) The licensee or any employee or agent of the licensee solicits driver training or commercial driver training instruction in an office of any department of the state having to do with the administration of any law relating to motor vehicles; or
- (7) The licensee or any employee or agent serving as a driver training instructor or commercial driver training instructor has had his or her license canceled, suspended, or revoked. (Ga. L. 1968, p. 436, § 7; Ga. L. 2003, p. 796, § 16.)

OPINIONS OF THE ATTORNEY GENERAL

Right to appeal from license revocation but not from denial of initial application. — Applicant has no course of appeal should the applicant initially be denied a license for a school or an instructor's permit; however, denial of an existing license requires a different result since when the state confers a license to engage

in a profession, trade, or occupation not inherently inimical to the public welfare such license becomes a valuable right which cannot be denied or abridged except after due notice and a fair and impartial hearing before an unbiased tribunal. 1968 Op. Att'y Gen. No. 68-278.

43-13-8. Rules and regulations; penalties; judicial review; judgments.

(a) The commissioner of driver services is authorized to prescribe, by rule, standards for the eligibility, conduct, equipment, and operation of driver training schools and instructors and commercial driver training schools and instructors and to adopt other reasonable rules and regulations to carry out this chapter. Notwithstanding the foregoing,

violations that are minor in nature and committed by a person, firm, or corporation shall be punished only by a written reprimand unless the person, firm, or corporation fails to remedy the violation within 30 days, in which case an administrative fine, not to exceed \$250.00, may be issued.

(b) The commissioner of the department shall have the authority to assess, after a hearing, an administrative fine not to exceed \$1,000.00 per violation against any driver training school or commercial driver training school that fails to comply with any requirement imposed by or pursuant to this chapter.

(c) The hearing and any administrative review thereof shall be conducted in accordance with the procedure for contested cases under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Any person, firm, or corporation who has exhausted all administrative remedies available and who is aggrieved or adversely affected by a final order or action of the commissioner shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50. All fines recovered under this Code section shall be paid into the state treasury. The commissioner may file, in the superior court:

(1) Wherein the person under order resides;

(2) If such person is a corporation, in the county wherein the corporation maintains its principal place of business; or

(3) In the county wherein the violation occurred, a certified copy of a final order of the commissioner, whether unappealed from or affirmed upon appeal, whereupon the court shall render judgment in accordance therewith and notify the parties.

Such judgment shall have the same effect, and proceedings in relation thereto shall thereafter be the same as though the judgment had been rendered in an action duly heard and determined by the court. The penalty prescribed in this Code section shall be concurrent, alternative, and cumulative with any and all other civil, criminal, or alternative rights, remedies, forfeitures, or penalties provided, allowed, or available to the commissioner with respect to any violation of this chapter or any order, rules, or regulations promulgated pursuant to this chapter. (Ga. L. 1968, p. 436, § 6; Ga. L. 2000, p. 951, § 12-9; Ga. L. 2003, p. 796, § 17; Ga. L. 2005, p. 334, § 25-2/HB 501.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2003, "Wherein" was substituted for "wherein" in para-

graph (c)(1), "If" was substituted for "if" in paragraph (c)(2), and "In" was substituted for "in" in paragraph (c)(3).

JUDICIAL DECISIONS

Cited in *Milner v. Burson*, 470 F.2d 870 (5th Cir. 1972).

OPINIONS OF THE ATTORNEY GENERAL

Department’s authority to regulate subject matter of instruction. — Department of Public Safety may set reasonable standards and regulate subject mat-

ter to be taught in course of instruction offered by commercial driver training school. 1968 Op. Att’y Gen. No. 68-278.

43-13-9. Disposition of funds.

All moneys received under this chapter shall be deposited with the Office of the State Treasurer. (Ga. L. 1968, p. 436, § 8; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “Office of the State Treasurer” for “Office of Treasury and Fis-

cal Services” at the end of this Code section.

43-13-10. Exceptions to operation of chapter.

(a) This chapter shall not apply to a college conducting a driver or commercial driver training course; nor shall it apply to driver improvement schools operated by the state or by a county or municipality.

(b) Any public or private secondary school or private postsecondary school may conduct driver training courses or driver’s education programs, subject to the requirement that the provisions of this chapter other than paragraph (2) of Code Section 43-13-4 shall apply to secondary schools and private postsecondary schools conducting driver training courses or driver’s education programs and to instructors therefor. (Ga. L. 1968, p. 436, § 10; Ga. L. 1998, p. 207, § 1; Ga. L. 2001, p. 208, § 1-10; Ga. L. 2003, p. 796, § 18.)

JUDICIAL DECISIONS

Constitutionality. — Because nothing in the statute specifically exempts public school driver education teachers, both private and public school driving instructors are operating under same standards and

restrictions and there is no denial of equal protection to private instructors. *Milner v. Burson*, 320 F. Supp. 706 (N.D. Ga. 1970) (see O.C.G.A. § 43-13-10).

OPINIONS OF THE ATTORNEY GENERAL

Accredited private schools offering driver education are exempt from the

statute. 1974 Op. Att’y Gen. No. 74-101 (see O.C.G.A. Ch. 13, T. 43).

43-13-11. Penalty.

Any person violating this chapter shall be guilty of a misdemeanor.
(Ga. L. 1968, p. 436, § 9.)

JUDICIAL DECISIONS

Cited in *Milner v. Burson*, 470 F.2d 870
(5th Cir. 1972).

CHAPTER 14

ELECTRICAL CONTRACTORS, PLUMBERS,
CONDITIONED AIR CONTRACTORS,
LOW-VOLTAGE CONTRACTORS,
AND UTILITY
CONTRACTORS

Sec.		Sec.	
43-14-1.	Declaration of purpose.		presence of certified utility manager or certified utility foreman required.
43-14-2.	Definitions.		
43-14-3.	Creation of board; members.	43-14-9.	Display of license and registration number.
43-14-4.	Chairperson; meetings; organization of divisions; meetings of divisions; quorums within divisions.	43-14-10.	Applicability of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."
43-14-5.	General powers of board.	43-14-11.	Injunction for violation of chapter.
43-14-6.	Powers and duties of divisions.	43-14-12.	Suspension of, or refusal to restore, licenses and certificates by municipal or county inspection authority; appeals; adoption and enforcement of codes at local level; bonds; fees or taxes.
43-14-7.	Powers and duties of division director.	43-14-12.1.	Evidence of violation; cease and desist orders; fines; other penalties for violations.
43-14-8.	Licensing required for electrical, plumbing, or conditioned air contracting; businesses conducted by partnerships, limited liability companies, and corporations; applications; review courses.	43-14-12.2.	Proof of unlawful practice of utility contracting by unlicensed individual; cease and desist orders; penalty for violations.
43-14-8.1.	License requirement for low-voltage electrical contracting; businesses conducted by partnerships, limited liability companies, and corporations; applications.	43-14-13.	Applicability of chapter.
43-14-8.2.	Utility contractor license; utility manager; business entities; severance of connection with utility manager; unlawful contracts.	43-14-14.	Penalty.
43-14-8.3.	Utility manager certificate.	43-14-15.	Redesignated.
43-14-8.4.	Utility foreman certificate;	43-14-16.	Exceptions to operation of chapter [Repealed].
		43-14-17.	Redesignated.
		43-14-18.	Termination [Repealed].

Cross references. — Provision of energy conservation assistance to residential customers by electric and gas utilities, T. 46, C. 4A.

Administrative rules and regulations. — Organization, Official Compilation of the Rules and Regulations of the State of Georgia, State Construction Industry Licensing Board, Chapter 121-1.

JUDICIAL DECISIONS

Cited in Johnson Cent. Serv. of Ga., Inc. v. Emory Univ., 170 Ga. App. 493, 317 S.E.2d 303 (1984).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — Some of the opinions noted hereunder were rendered prior to the reenactment and amendment of this chapter by Ga. L. 1983, p. 424, § 1, effective March 14, 1983.

Legislature intended to preempt local jurisdictions from establishing and maintaining local licensing schemes by enacting this chapter. 1980 Op. Att'y Gen. No. U80-31 (see O.C.G.A. Ch. 14, T. 43).

Issuance of limited license without requiring examination for licensure. — An electrical contractor, master plumber, or journeyman plumber, legally

practicing trade pursuant to a valid state-wide, county, or municipal qualifications license on the effective date of this chapter (July 1, 1980), may be issued a limited license by the respective Construction Industry Division to practice in the same capacity and within the same geographic area as that individual is currently licensed to practice without the necessity of taking an examination for licensure under this chapter. 1980 Op. Att'y Gen. No. 80-75 (see O.C.G.A. Ch. 14, T. 43).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public

Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

Validity of statutory or municipal regulation of heating contractors, 33 ALR 146.

Municipal regulation of electricians and the installation of electrical work, 96 ALR 1506.

Application of res ipsa loquitur rule in case of injury or damages from heating unit, electrical appliance, etc., installed by defendant, 3 ALR2d 1448.

Validity of regulations as to plumbers and plumbing, 22 ALR2d 816.

43-14-1. Declaration of purpose.

This chapter is enacted for the purpose of safeguarding homeowners, other property owners, tenants, and the general public against faulty, inadequate, inefficient, or unsafe electrical, plumbing, low-voltage wiring, utility contracting, or conditioned air installations. The practice of electrical contracting, plumbing contracting, installing, or repairing,

low-voltage contracting, utility contracting, and conditioned air contracting are declared to be businesses or professions affecting the public interest; and this chapter shall be liberally construed so as to accomplish the purposes stated in this Code section. (Ga. L. 1949, p. 1622, § 1; Ga. L. 1968, p. 308, § 1; Ga. L. 1971, p. 583, § 2; Ga. L. 1980, p. 1299, § 1; Ga. L. 1983, p. 424, § 1; Ga. L. 1984, p. 1129, § 1; Ga. L. 1989, p. 1756, § 1.)

JUDICIAL DECISIONS

Cited in *Waller v. State Constr. Indus.* 554 (1983); *Bowers v. Howell*, 203 Ga. Licensing Bd., 250 Ga. 529, 299 S.E.2d App. 636, 417 S.E.2d 392 (1992).

43-14-2. Definitions.

As used in this chapter, the term:

(1) "Alarm system" means any device or combination of devices used to detect a situation, causing an alarm in the event of a burglary, fire, robbery, medical emergency, or equipment failure, or on the occurrence of any other predetermined event.

(1) "Board" means the State Construction Industry Licensing Board.

(2) "Certificate of competency" means a valid and current certificate issued by the Division of Electrical Contractors created in Code Section 43-14-3, which certificate shall give the named electrical contractor to which it is issued authority to engage in electrical contracting of the kind described therein. Certificates of competency shall be of two kinds, Class I and Class II, according to the classification of license held by the electrical contractor.

(3) "Conditioned air contracting" means the installation, repair, or service of conditioned air systems or conditioned air equipment. Service to or installation of the electrical connection between the electrical disconnect and conditioned air equipment is considered to be installation, repair, or service of conditioned air equipment or the conditioned air system. Service to or installation of the electrical circuit from the electrical distribution panel to the conditioned air equipment where the electrical service to the building or site is a single-phase electrical circuit not exceeding 200 amperes is considered to be installation, repair, or service of conditioned air equipment or the conditioned air system.

(4) "Conditioned air contractor" means an individual who is engaged in conditioned air contracting under express or implied contract or who bids for, offers to perform, purports to have the capacity to perform, or does perform conditioned air contracting services

under express or implied contract. The term "conditioned air contractor" shall not include a person who is an employee of a conditioned air contractor and who receives only a salary or hourly wage for performing conditioned air contracting work.

(5) "Conditioned air equipment" means heating and air-conditioning equipment covered under state codes and the natural gas piping system on the outlet side of the gas meter.

(6) "Electrical contracting" means the installation, maintenance, alteration, or repair of any electrical equipment, apparatus, control system, or electrical wiring device which is attached to or incorporated into any building or structure in this state but shall not include low-voltage contracting.

(7) "Electrical contractor" means any person who engages in the business of electrical contracting under express or implied contract or who bids for, offers to perform, purports to have the capacity to perform, or does perform electrical contracting services under express or implied contract. The term "electrical contractor" shall not include a person who is an employee of an electrical contractor and who receives only a salary or hourly wage for performing electrical contracting work.

(8) "Executive director" means the executive director of the State Construction Industry Licensing Board.

(8.1) "General system" means any electrical system, other than an alarm or telecommunication system, involving low-voltage wiring.

(9) "Journeyman plumber" means any person other than a master plumber who has practical knowledge of the installation of plumbing and installs plumbing under the direction of a master plumber.

(10) "License" means a valid and current certificate of registration issued by a division of the board, which certificate shall give the named person to whom it is issued authority to engage in the activity prescribed thereon.

(10.1) "Low-voltage contracting" means the installation, alteration, service, or repair of a telecommunication system, alarm system, or general system involving low-voltage wiring.

(10.2) "Low-voltage contractor" means an individual who is engaged in low-voltage contracting under express or implied contract or who bids for, offers to perform, purports to have the capacity to perform, or does perform low-voltage contracting services under express or implied contract. An employee of a low-voltage contractor who receives only a salary or hourly wage for performing low-voltage contracting work shall not be required to be licensed under this

chapter, except that those employees upon whom the qualification of a partnership, limited liability company, or corporation rests as outlined in subsection (b) of Code Section 43-14-8.1 shall be licensed.

(10.3) “Low-voltage wiring” means:

(A) Wiring systems of 50 volts or less and control circuits directly associated therewith;

(B) Wiring systems having a voltage in excess of 50 volts, provided such systems consist solely of power limited circuits meeting the definition of a Class II and Class III wiring system as defined in Article 725 of the National Electrical Code; or

(C) Line voltage wiring having a voltage not in excess of 300 volts to ground and installed from the load-side terminals of a suitable disconnecting means which has been installed for the specific purpose of supplying the low-voltage wiring system involved or installed from a suitable junction box which has been installed for such specific purpose.

(11) “Master plumber” means any individual engaging in the business of plumbing under express or implied contract or who bids for, offers to perform, purports to have the capacity to perform, or does perform plumbing contracting services under express or implied contract.

(12) “Plumbing” means the practice of installing, maintaining, altering, or repairing piping fixtures, appliances, and appurtenances in connection with sanitary drainage or storm drainage facilities, venting systems, medical gas piping systems, natural gas piping systems on the outlet side of gas meters, or public or private water supply systems within or adjacent to any building, structure, or conveyance; provided, however, that after July 1, 1997, only master plumbers and journeyman plumbers who have been certified by the Division of Master Plumbers and Journeyman Plumbers to perform such tasks shall be authorized to install, maintain, alter, or repair medical gas piping systems. The term “plumbing” also includes the practice of and materials used in installing, maintaining, extending, or altering the natural gas, storm-water, sewerage, and water supply systems of any premises to their connection with any point of public disposal or other acceptable terminal; provided, however, that licensure under this chapter shall not be required for a contractor certified by the Department of Public Health to make the connection to any on-site waste-water management system from the stub out exiting the structure to an on-site waste-water management system. Notwithstanding any other provision of this chapter, any person who holds a valid master plumbing license or any company which holds a valid utility contractor license shall be qualified to construct, alter, or

repair any plumbing system which extends from the property line up to but not within five feet of any building, structure, or conveyance, regardless of the cost or depth of any such plumbing system.

(12.1) "Telecommunication system" means a switching system and associated apparatus which performs the basic function of two-way voice or data service, or both, and which can be a commonly controlled system capable of being administered both locally and remotely via secured access.

(13) "Utility contracting" means undertaking to construct, erect, alter, or repair or have constructed, erected, altered, or repaired any utility system.

(14) "Utility contractor" means a sole proprietorship, partnership, or corporation which is engaged in utility contracting under express or implied contract or which bids for, offers to perform, purports to have the capacity to perform, or does perform utility contracting under express or implied contract.

(15) "Utility foreman" means any individual who is employed by a licensed contractor to supervise the construction, erection, alteration, or repair of utility systems.

(16) "Utility manager" means any individual who is employed by a utility contractor to have oversight and charge of the construction, erection, alteration, or repair of utility systems.

(17) "Utility system" means:

(A) Any system at least five feet underground, when installed or accessed by trenching, open cut, cut and cover, or other similar construction methods which install or access the system from the ground surface, including, but not limited to, gas distribution systems, electrical distribution systems, communication systems, water supply systems, and sanitary sewerage and drainage systems; and

(B) Reservoirs and filtration plants, water and waste-water treatment plants, leachate collection and treatment systems associated with landfills, and pump stations, when the system distributes or collects a service, product, or commodity for which a fee or price is paid for said service, product, or commodity or for the disposal of said service, product, or commodity. (Ga. L. 1949, p. 1622, § 2; Ga. L. 1968, p. 308, §§ 2, 3; Ga. L. 1971, p. 583, § 3; Ga. L. 1980, p. 1299, § 2; Ga. L. 1981, p. 1703, § 1; Ga. L. 1983, p. 424, § 1; Ga. L. 1984, p. 1129, § 2; Ga. L. 1989, p. 1756, § 2; Ga. L. 1992, p. 6, § 43; Ga. L. 1993, p. 123, § 28; Ga. L. 1993, p. 733, § 1; Ga. L. 1993, p. 1339, § 1; Ga. L. 1994, p. 383, § 1; Ga. L. 1995, p. 860, § 2; Ga. L. 1996, p. 1078, § 1; Ga. L. 1999, p. 81, § 43; Ga. L.

2000, p. 1527, § 3; Ga. L. 2003, p. 419, § 1; Ga. L. 2004, p. 390, § 1; Ga. L. 2005, p. 472, § 1/HB 207; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2009 amendment, effective July 1, 2009, substituted “Department of Community Health” for “Department of Human Resources” in the second sentence of paragraph (12).

The 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in the second sentence of paragraph (12).

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 1992, a comma was deleted following “rests” in paragraph (10.2), and “storm-water” was substituted for “storm water” in paragraph (12).

Pursuant to Code Section 28-9-5, in 2004, “Reservoirs” was substituted for “Reserviors” at the beginning of subparagraph (17)(B).

Law reviews. — For annual survey of construction law, see 57 Mercer L. Rev. 79 (2005).

JUDICIAL DECISIONS

Electrical work performed as personal favor at homeowners’ request and on temporary basis did not come within the meaning of “electrical contracting” in O.C.G.A. § 43-14-2(6) so as to require a license under O.C.G.A. § 43-14-8(a). *Echols v. Quality Mechanical, Inc.*, 177 Ga. App. 870, 341 S.E.2d 328 (1986).

Septic tank installation, maintenance, or repair is not included within the definition of “plumbing” in O.C.G.A. § 43-14-2(12), and, as a result, state law does not preempt counties from enacting regulations that specify the qualifications of persons who install septic tanks. *DeKalb County Bd. of Health v. Lee*, 266 Ga. 507, 467 S.E.2d 564 (1996).

OPINIONS OF THE ATTORNEY GENERAL

“Conditioned air contracting” construed. — Cleaning air ducts and air duct systems which involves the disassembly and re-assembly, lubrication, or adjustment of system components constitutes “service of conditioned air systems or con-

ditioned air equipment” as defined in O.C.G.A. § 43-14-2(5) and therefore falls within the statutory definition of “conditioned air contracting.” 1991 Op. Att’y Gen. 91-24.

43-14-3. Creation of board; members.

(a) There is created within the executive branch of state government the State Construction Industry Licensing Board. The board shall be assigned to the Secretary of State’s office for administrative purposes and shall be under the jurisdiction of the division director.

(b) The board shall be composed of 27 members as follows:

(1) Five members known as the Division of Electrical Contractors, one of whom shall be a consulting engineer engaged in electrical practice, another of whom shall be the chief electrical inspector of a county or municipality and shall have served in such office for five years immediately preceding appointment to the board, and the remaining three of whom shall be engaged in the electrical contracting business;

(2) Five members known as the Division of Master Plumbers and Journeyman Plumbers, one of whom shall be a full-time plumbing inspector of a county or municipality, three of whom shall be master or contracting plumbers, and one of whom shall be a journeyman plumber;

(3) Five members known as the Division of Conditioned Air Contractors, one of whom shall be a licensed professional engineer engaged in mechanical practice, one of whom shall be the chief conditioned air inspector of a county or municipality, and three of whom shall be conditioned air contractors with more than five years of installation and service experience in the trade;

(4) Five members known as the Division of Low-voltage Contractors, one of whom shall be an alarm system low-voltage contractor, one of whom shall be an unrestricted low-voltage contractor, one of whom shall be a telecommunication system low-voltage contractor, one of whom shall be a professional electrical engineer, and one of whom shall be the chief electrical inspector of a county or municipality;

(5) Five members known as the Division of Utility Contractors, three of whom shall be utility contractors, one of whom shall be a registered professional engineer, and one of whom shall be an insurance company representative engaged primarily in the bonding of construction projects; and

(6) Two members who shall not have any connection with the electrical contracting, plumbing, or conditioned air contracting businesses whatsoever but who shall have a recognized interest in consumer affairs and consumer protection concerns.

(c) All members shall be appointed by the Governor, subject to confirmation by the Senate, for four-year terms.

(d) A member shall serve until a successor has been duly appointed and qualified.

(e) The Governor shall make appointments to fill the unexpired portions of any terms vacated for any reason. In making such appointments, the Governor shall preserve the composition of the board as required by this chapter. Members shall be eligible for reappointment.

(f) Any appointive member who, during his or her term, shall cease to meet the qualifications for original appointment shall thereby forfeit membership on the board.

(g) Each member of the board shall take an oath of office before the Governor to faithfully perform the duties of such office.

(h) The Governor may remove any member for failure to attend meetings, neglect of duty, incompetence, revocation or suspension of professional trade license, or other dishonorable conduct.

(i) Members of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2. (Ga. L. 1949, p. 1622, §§ 7-10; Ga. L. 1968, p. 308, §§ 7, 8; Ga. L. 1971, p. 583, §§ 5, 6, 8; Ga. L. 1980, p. 1299, § 3; Ga. L. 1983, p. 424, § 1; Ga. L. 1984, p. 22, § 43; Ga. L. 1984, p. 1129, § 3; Ga. L. 1989, p. 1756, § 3; Ga. L. 1993, p. 1339, § 2; Ga. L. 1994, p. 383, § 2; Ga. L. 2000, p. 1706, § 19.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, subsections (d) through (j) were redesignated as subsections (c) through (i), respectively.

43-14-4. Chairperson; meetings; organization of divisions; meetings of divisions; quorums within divisions.

(a) The office of chairperson shall be rotated among the five divisions enumerated in Code Section 43-14-3 unless the board, through its rules and regulations, provides otherwise. Any vacancy in the office of chairperson shall be filled by the members for the unexpired term. The person selected to fill the vacancy shall be a member of the same division as the previous chairperson.

(b) The board shall meet at the call of the chairperson or upon the recommendation of a majority of its members.

(c) Each division within the board shall also elect from its membership a chairperson who shall serve for a term of two years. Any vacancy in the office of chairperson shall be filled by one of the members for the unexpired term.

(d) Any member elected chairperson of a division may serve more than one consecutive term of office.

(e) Each division shall carry out its powers and duties provided for in this chapter with the assistance of the executive director and staff of the board.

(f) The divisions shall meet at the call of the chairperson.

(g) Three members of each division shall constitute a quorum for the transaction of business of such division. (Ga. L. 1949, p. 1622, § 8; Ga. L. 1968, p. 308, §§ 7-9; Ga. L. 1971, p. 583, §§ 4, 6, 7; Ga. L. 1980, p. 1299, § 4; Ga. L. 1983, p. 424, § 1; Ga. L. 1984, p. 1129, § 4; Ga. L. 1989, p. 1756, § 4; Ga. L. 1993, p. 1339, § 3.)

43-14-5. General powers of board.

The board shall have the power to:

(1) Request from the various state departments and other agencies and authorities of the state and its political subdivisions and their agencies and authorities such available information as it may require in its work; and all such agencies and authorities shall furnish such requested available information to the board within a reasonable time;

(2) Provide by regulation for reciprocity with other states in the registration and licensing of electrical contractors, master plumbers, journeyman plumbers, low-voltage contractors, utility contractors, or conditioned air contractors and in the certification of utility contracting foremen, provided that such other states have requirements substantially equal to the requirements in force in this state for registration, licensure, and certification; provided, further, that a similar privilege is offered to residents of this state;

(3) Adopt an official seal for its use and change it at pleasure;

(4) Establish the policies for regulating the businesses of electrical contracting, plumbing, low-voltage, utility, and conditioned air contracting;

(4.1) Upon notice and hearing authorized and conducted in accordance with Code Section 43-14-10 and any rules and regulations promulgated by the board, either by the board directly or through a valid delegation of the board's enforcement power to a division thereof, assess civil penalties in an amount up to \$10,000.00 per violation against any person found to be in violation of any requirement of this chapter;

(5) Determine qualifications for licensure or certification including such experience requirements as the board deems necessary; and

(6) Promulgate and adopt rules and regulations necessary to carry out this chapter. (Ga. L. 1949, p. 1622, §§ 9, 11, 15; Ga. L. 1968, p. 308, §§ 10, 12, 16; Ga. L. 1971, p. 583, §§ 9, 14; Ga. L. 1980, p. 1299, § 7; Ga. L. 1982, p. 3, § 43; Ga. L. 1983, p. 424, § 1; Ga. L. 1984, p. 1129, § 5; Ga. L. 1989, p. 1756, § 5; Ga. L. 1993, p. 1339, § 4; Ga. L. 2004, p. 390, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, "and" was deleted from the end of paragraph (4) and added to the end of paragraph (5).

Administrative rules and regula-

tions. — Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of State Construction Industry Licensing Board, Chapter 121-1 et seq.

43-14-6. Powers and duties of divisions.

(a) The Division of Electrical Contractors, with respect to applicants for a license to engage in or licensees engaging in the business of

electrical contracting; the Division of Master Plumbers and Journeyman Plumbers, with respect to applicants for a license to engage in or licensees engaging in the business of plumbing as master plumbers or journeyman plumbers; the Division of Low-voltage Contractors, with respect to applicants for a license to engage in or licensees engaging in the business of low-voltage contracting; the Division of Utility Contractors with respect to applicants for a license to engage in or licensees engaging in the business of utility contracting and with respect to applicants for a certificate to be a utility manager or utility foreman or holders of a utility manager or utility foreman certificate; and the Division of Conditioned Air Contractors, with respect to applicants for a license to engage in or licensees engaging in the business of conditioned air contracting, shall:

(1) Approve examinations for all applicants for licenses or certificates, except for utility contractor licenses and utility foreman certificates. The Division of Electrical Contractors shall approve separate examinations for Class I and Class II licenses. Class I licenses shall be restricted to electrical contracting involving multi-family structures of not more than two levels or single-family dwellings of up to three levels. In addition, the structures shall have single-phase electrical installations which do not exceed 400 amperes at the service drop or the service lateral. Class II licenses shall be unrestricted. The Division of Master Plumbers and Journeyman Plumbers shall approve separate examinations for Master Plumber Class I, Master Plumber Class II, and Journeyman Plumbers. Master Plumber Class I licenses shall be restricted to plumbing involving single-family dwellings and one-level dwellings designed for not more than two families and commercial structures not to exceed 10,000 square feet in area. Master Plumber Class II licenses shall be unrestricted. The Division of Conditioned Air Contractors shall approve separate examinations for Class I and Class II licenses. Class I licenses shall be restricted to the installation, repair, or service of conditioned air systems or equipment not exceeding 175,000 BTU (net) of heating and five tons (60,000 BTU) of cooling. Class II licenses shall be unrestricted. The Division of Low-voltage Contractors shall approve separate examinations for Low-voltage Contractor Class LV-A, Low-voltage Contractor Class LV-T, Low-voltage Contractor Class LV-U, and Low-voltage Contractor Class LV-G. Class LV-A licenses shall be restricted to alarm and general system low-voltage contracting, Class LV-T licenses shall be restricted to telecommunication and general system low-voltage contracting, Class LV-G licenses shall be restricted to general system low-voltage contracting, and Class LV-U licenses shall be unrestricted and permit the performance of alarm, telecommunication, and general system low-voltage contracting;

(2) Register and license or grant a certificate and issue renewal licenses and renewal certificates biennially to all persons meeting the qualifications for a license or certificate. The following licenses or certificates shall be issued by the divisions:

- (A) Electrical Contractor Class I;
- (B) Electrical Contractor Class II;
- (C) Master Plumber Class I;
- (D) Master Plumber Class II;
- (E) Journeyman Plumber;
- (F) Conditioned Air Contractor Class I;
- (G) Conditioned Air Contractor Class II;
- (H) Low-voltage Contractor Class LV-A;
- (I) Low-voltage Contractor Class LV-T;
- (J) Low-voltage Contractor Class LV-G;
- (K) Low-voltage Contractor Class LV-U;
- (L) Utility Contractor; Class A;
- (M) Utility Contractor; Class B;
- (N) Utility Contractor; Class U;
- (O) Utility Manager (certificate); and
- (P) Utility Foreman (certificate);

(3) Investigate, with the aid of the division director, alleged violations of this chapter or other laws and rules and regulations of the board relating to the profession;

(4) After notice and hearing, have the power to reprimand any person, licensee, or certificate holder, or to suspend, revoke, or cancel the license or certificate of or refuse to grant, renew, or restore a license or certificate to any person, licensee, or certificate holder upon any one of the following grounds:

(A) The commission of any false, fraudulent, or deceitful act or the use of any forged, false, or fraudulent document in connection with the license or certificate requirements of this chapter or the rules and regulations of the board;

(B) Failure at any time to comply with the requirements for a license or certificate under this chapter or the rules and regulations of the board;

(C) Habitual intemperance in the use of alcoholic spirits, narcotics, or stimulants to such an extent as to render the license or certificate holder unsafe or unfit to practice any profession licensed or certified under this chapter;

(D) Engaging in any dishonorable or unethical conduct likely to deceive, defraud, or harm the public;

(E) Knowingly performing any act which in any way assists an unlicensed or noncertified person to practice such profession;

(F) Violating, directly or indirectly, or assisting in or abetting any violation of any provision of this chapter or any rule or regulation of the board;

(G) The performance of any faulty, inadequate, inefficient, or unsafe electrical, plumbing, low-voltage contracting, utility contracting, or conditioned air work likely to endanger life, health, or property. The performance of any work that does not comply with the standards set by state codes or by local codes in jurisdictions where such codes are adopted, provided that such local codes are as stringent as the state codes, or by other codes or regulations which have been adopted by the board, shall be prima-facie evidence of the faulty, inadequate, inefficient, or unsafe character of such electrical, plumbing, low-voltage contracting, utility contracting, or conditioned air work; provided, however, that the board, in its sole discretion, for good cause shown and under such conditions as it may prescribe, may restore a license to any person whose license has been suspended or revoked;

(H) With respect to utility contractors, the bidding by such a utility contractor in excess of license coverage; or

(I) With respect to utility contractors, violations of Chapter 9 of Title 25;

(5) Review amendments to or revisions in the state minimum standard codes as prepared pursuant to Part 1 of Article 1 of Chapter 2 of Title 8; and the Department of Community Affairs shall be required to provide to the division director a copy of any amendment to or revision in the state minimum standard codes at least 45 days prior to the adoption thereof; and

(6) Do all other things necessary and proper to exercise their powers and perform their duties in accordance with this chapter.

(b) The Division of Electrical Contractors may also provide, by rules and regulations, for the issuance of certificates of competency pertaining to financial responsibility and financial disclosure; provided, however, that such rules and regulations are adopted by the board. The

division shall issue certificates of competency and renewal certificates to persons meeting the qualifications therefor.

(c) The divisions mentioned in subsection (a) of this Code section shall also hear appeals resulting from the suspension of licenses by an approved municipal or county licensing or inspection authority pursuant to Code Section 43-14-12.

(d)(1) With respect to Conditioned Air Contractor Class I and Class II licenses, the Division of Conditioned Air Contractors shall be authorized to require persons seeking renewal of licenses to complete board approved continuing education of not more than four hours annually. The division shall be authorized to approve courses offered by institutions of higher learning, vocational technical schools, and trade, technical, or professional organizations; provided, however, that continuing education courses or programs related to conditioned air contracting provided or conducted by public utilities, equipment manufacturers, or institutions under the State Board of the Technical College System of Georgia shall constitute acceptable continuing professional education programs for the purposes of this subsection. Continuing education courses or programs shall be in the areas of safety, technological advances, business management, or government regulation. Courses or programs conducted by manufacturers specifically to promote their products shall not be approved.

(2) All provisions of this subsection relating to continuing professional education shall be administered by the division.

(3) The division shall be authorized to waive the continuing education requirements in cases of hardship, disability, or illness or under such other circumstances as the board deems appropriate.

(4) The division shall be authorized to promulgate rules and regulations to implement and ensure compliance with the requirements of this Code section.

(5) The continuing education requirements of this subsection shall not be required of any licensed conditioned air contractor who is a registered professional engineer.

(6) This Code section shall apply to each licensing and renewal cycle which begins after the 1990-1991 renewal.

(e)(1) With respect to Electrical Contractor Class I and Class II licenses, the Division of Electrical Contractors shall be authorized to require persons seeking renewal of licenses to complete board approved continuing education of not more than four hours annually. The division shall be authorized to approve courses offered by institutions of higher learning, vocational-technical schools, and trade, technical, or professional organizations; provided, however,

that continuing education courses or programs related to electrical contracting provided or conducted by public utilities, equipment manufacturers, or institutions under the State Board of the Technical College System of Georgia shall constitute acceptable continuing professional education programs for the purposes of this subsection. Continuing education courses or programs conducted by manufacturers specifically to promote their products shall not be approved.

(2) The division shall be authorized to waive the continuing education requirements in cases of hardship, disability, or illness or under such other circumstances as the division deems appropriate.

(f)(1) With respect to utility foreman certificates and utility manager certificates issued under this chapter, the Division of Utility Contractors shall be authorized to require persons seeking renewal of such certificates to complete board approved continuing education of not more than four hours annually. The division shall be authorized to approve courses offered by institutions of higher learning, vocational-technical schools, and trade, technical, or professional organizations; provided, however, that continuing education courses or programs related to utility contracting provided or conducted by institutions under the State Board of the Technical College System of Georgia shall constitute acceptable continuing professional education programs for the purposes of this subsection.

(2) The division shall be authorized to waive the continuing education requirements in cases of hardship, disability, or illness or under such other circumstances as the division deems appropriate.

(g)(1) With respect to Journeyman Plumber, Master Plumber Class I, and Master Plumber Class II licenses, the Division of Master Plumbers and Journeyman Plumbers shall be authorized to require persons seeking renewal of such licenses to complete board approved continuing education of not more than four hours annually. The division shall be authorized to approve courses offered by institutions of higher learning, vocational-technical schools, and trade, technical, or professional organizations; provided, however, that continuing education courses or programs related to plumbing provided or conducted by institutions under the State Board of the Technical College System of Georgia shall constitute acceptable continuing professional education programs for the purposes of this subsection.

(2) The division shall be authorized to waive the continuing education requirements in cases of hardship, disability, or illness or under such other circumstances as the division deems appropriate. (Ga. L. 1949, p. 1622, §§ 4-6, 14, 15; Ga. L. 1968, p. 308, §§ 4-6, 14, 15; Ga. L. 1971, p. 583, §§ 10, 13, 16; Ga. L. 1980, p. 1299, § 8; Ga. L. 1981, p. 1703, § 2; Ga. L. 1982, p. 3, § 43; Ga. L. 1983, p. 424, § 1;

Ga. L. 1984, p. 1129, § 6; Ga. L. 1989, p. 1756, § 6; Ga. L. 1991, p. 1581, § 1; Ga. L. 1993, p. 1339, §§ 5, 6; Ga. L. 1994, p. 383, § 3; Ga. L. 1994, p. 659, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2008, p. 894, § 1/HB 611; Ga. L. 2011, p. 632, § 3/HB 49; Ga. L. 2011, p. 752, § 43/HB 142.)

The 2011 amendments. — The first 2011 amendment, effective July 1, 2011, substituted “State Board of the Technical College System of Georgia” for “State Board of Technical and Adult Education” in paragraphs (d)(1), (e)(1), (f)(1), and (g)(1). The second 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, revised punctuation in the second sentence of paragraph (a)(1).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, “Master Plumber Class I, Master Plumber Class II, and Journeyman Plumber” was substituted for “master plumber Class I, master plumber Class II, and journeyman plumber” in paragraph (a)(2), and a semicolon was substituted for a period at the end of subparagraph (a)(4)(I).

OPINIONS OF THE ATTORNEY GENERAL

Licensed contractor who subcontracts work to an unlicensed subcontractor may be in violation of O.C.G.A. § 43-14-6(a)(4)(E) by assisting an unlicensed person to practice the contractor’s profession. 1986 Op. Att’y Gen. No. 86-34.

Restrictions on Class I master plumbers. — Class I master plumbers are restricted under O.C.G.A. § 43-14-6 from plumbing (1) attached housing for more than two families even if each unit is separately owned or has separate water and sewer connections, and (2) commercial structures which exceed 10,000 square feet even where the plumbing is confined to an area of less than 10,000 square feet. 1988 Op. Att’y Gen. No. 88-25.

Examination of applicants. — Since former paragraph (a)(1) of O.C.G.A. § 43-14-6 specifically required the State Construction Industry Licensing Board, Division of Master Plumbers and Journeyman Plumbers, to examine applicants based on the “applicable state minimum standards codes” and, as of October 1, 1991, both the Georgia State Plumbing Code and the Standard Plumbing Code were the applicable state standard codes, it appeared to be the legislative intent for prospective licensees to be tested on both codes by the division. 1990 Op. Att’y Gen. No. 90-9 (decided prior to 1993 amendment).

43-14-7. Powers and duties of division director.

(a) All orders and processes of the board and the divisions of the board shall be signed and attested by the division director; and any notice or legal process necessary to be served upon the board or the divisions may be served upon the division director.

(b) The division director or his designee is vested with the power and authority to make such investigations in connection with the enforcement of this chapter and the rules and regulations of the board as he, the board, the divisions of the board, or any district attorney may deem necessary or advisable. (Ga. L. 1980, p. 1299, § 5; Ga. L. 1982, p. 3, § 43; Ga. L. 1983, p. 424, § 1; Ga. L. 2000, p. 1706, § 19.)

43-14-8. Licensing required for electrical, plumbing, or conditioned air contracting; businesses conducted by partnerships, limited liability companies, and corporations; applications; review courses.

(a) No person shall engage in the electrical contracting business as an electrical contractor unless such person has a valid license from the Division of Electrical Contractors and a certificate of competency, if such certificates are issued by the division pursuant to subsection (b) of Code Section 43-14-6.

(b)(1) No person shall engage in the business of plumbing as a master plumber unless such person has a valid license from the Division of Master Plumbers and Journeyman Plumbers.

(2) No person shall engage in the business of plumbing as a journeyman plumber unless such person has a valid license from the Division of Master Plumbers and Journeyman Plumbers.

(c)(1) No person shall engage in the business of conditioned air contracting as a conditioned air contractor unless such person has a valid license from the Division of Conditioned Air Contractors.

(2) A person who is not licensed as a conditioned air contractor shall be prohibited from advertising in any manner that such person is in the business or profession of a conditioned air contractor unless the work is performed by a licensed conditioned air contractor.

(d) Notwithstanding any other provision of this chapter, prior to and including September 30, 1983, the following persons, desiring to qualify under the provisions stated in this subsection, shall be issued a state-wide license without restriction by the appropriate division of the State Construction Industry Licensing Board, provided that such individual submits proper application and pays or has paid the required fees and is not otherwise in violation of this chapter:

(1) Any individual holding a license issued by the State Construction Industry Licensing Board, prior to the effective date of this chapter;

(2) Any individual holding a license issued by the State Board of Electrical Contractors, the State Board of Examiners of Plumbing Contractors, or the State Board of Warm Air Heating Contractors;

(3) Any individual holding a license to engage in such vocation issued to him or her by any governing authority of any political subdivision; and

(4) Any individual who has successfully and efficiently engaged in such vocation in a local jurisdiction, which did not issue local licenses,

for a period of at least two consecutive years immediately prior to the time of application. To prove that he or she has successfully engaged in said vocation, the individual shall only be required to give evidence of three successful jobs completed over such period. Such applicant shall swear before a notary public that such evidence is true and accurate prior to its submission to the division.

(e) The decision of the division as to the necessity of taking the examination or as to the qualifications of applicants taking the required examination shall, in the absence of fraud, be conclusive. All individuals, partnerships, limited liability companies, or corporations desiring to engage in such vocation after September 30, 1983, shall take the examination and qualify under this chapter before engaging in such vocation or business, including such vocation at the local level.

(f) No partnership, limited liability company, or corporation shall have the right to engage in the business of electrical contracting unless there is regularly connected with such partnership, limited liability company, or corporation a person or persons actually engaged in the performance of such business on a full-time basis who have valid licenses issued to them as provided for in this chapter.

(g) No partnership, limited liability company, or corporation shall have the right to engage in the business of plumbing unless there is regularly connected with such partnership, limited liability company, or corporation a person or persons actually engaged in the performance of such business on a full-time basis who have valid licenses for master plumbers issued to them as provided in this chapter.

(h) No partnership, limited liability company, or corporation shall have the right to engage in the business of conditioned air contracting unless there is regularly connected with such partnership, limited liability company, or corporation a person or persons actually engaged in the performance of such business on a full-time basis who have valid licenses issued to them as provided for in this chapter; provided, however, that partners, officers, and employees of the individual who fulfilled the licensing requirements shall continue to be authorized to engage in the business of conditioned air contracting under a license which was valid at the time of the licensee's death for a period of 90 days following the date of such death.

(i) It shall be the duty of all partnerships, limited liability companies, and corporations qualified under this chapter to notify the appropriate division immediately of the severance of connection with such partnership, limited liability company, or corporation of any person or persons upon whom such qualification rested.

(j) All applicants for examinations and licenses provided for by this chapter and all applicants for renewal of licenses under this chapter

shall be required to fill out a form which shall be provided by each division, which form shall show whether or not the applicant is an individual, partnership, limited liability company, or corporation and, if a partnership, limited liability company, or corporation, the names and addresses of the partners or members or the names and addresses of the officers, when and where formed or incorporated, and such other information as the board or each division may require. All forms of applications for renewal of licenses shall also show whether or not the applicant, if it is a partnership, limited liability company, or corporation, still has connected with it a duly qualified person holding a license issued by the division.

(k) The board shall notify each local governing authority of the provisions of this chapter relating to licensure, especially the provisions of subsection (d) of this Code section. The board shall notify such governing authorities that after September 30, 1983, any person desiring a license to engage in a profession covered by this chapter shall be required to pass an examination as provided in this chapter.

(l) Any applicant for licensure standing the examination on and after July 1, 1989, who fails the examination for licensure twice after such date shall be required to present satisfactory evidence to the appropriate division that the applicant has completed a board approved review course before such applicant will be admitted to a third examination. If such applicant fails the examination a third time, the applicant shall not be required to complete additional board approved review courses prior to taking subsequent examinations. (Ga. L. 1949, p. 1622, §§ 4-6; Ga. L. 1968, p. 308, §§ 4-6; Ga. L. 1971, p. 583, § 10; Ga. L. 1980, p. 1299, § 9; Ga. L. 1981, p. 1703, § 3; Ga. L. 1982, p. 3, § 43; Ga. L. 1983, p. 424, § 1; Ga. L. 1989, p. 1617, § 1; Ga. L. 1993, p. 123, § 29; Ga. L. 2001, p. 883, § 1; Ga. L. 2003, p. 419, § 2.)

JUDICIAL DECISIONS

Constitutionality. — Former subparagraph (e)(2)(A) of O.C.G.A. § 43-14-8 was unconstitutional insofar as it denied to formerly locally licensed plumbers the rights extended to formerly state-licensed plumbers. *Waller v. State Constr. Indus. Licensing Bd.*, 250 Ga. 529, 299 S.E.2d 554 (1983) (decided prior to 1983 amendment).

Electrical work performed as personal favor at homeowners' request and on temporary basis did not come within the meaning of "electrical contracting" in O.C.G.A. § 43-14-2(6) so as to require a license under O.C.G.A. § 43-14-8(a). *Echols v. Quality Mechan-*

cal, Inc., 177 Ga. App. 870, 341 S.E.2d 328 (1986).

No subcontractor's lien permitted.

— Because a subcontractor did not actually comply with O.C.G.A. § 43-14-8(f) as the evidence indicated that a Georgia-licensed electrician with whom the subcontractor affiliated itself through an alleged joint venture only presented electrical contracting licenses when permits for the work were applied for and took no action to inspect others' electrical work or to verify that the work complied with the applicable codes, the subcontractor could not enforce the subcontract with the contractor, could not recover in quan-

tum meruit under O.C.G.A. § 9-2-7 as the express contract violated public policy, and could not file a subcontractor's lien under O.C.G.A. §§ 44-14-361.1 and 44-14-367. *JR Construction/Electric, LLC v. Ordner Constr. Co.*, 294 Ga. App. 453, 669 S.E.2d 224 (2008).

Cited in *Bowers v. Howell*, 203 Ga. App. 636, 417 S.E.2d 392 (1992); *Associated Elec. Contractors v. Edlen Elec. Exhibition Servs. of Ga., Inc.*, 246 Ga. App. 118, 539 S.E.2d 835 (2000).

OPINIONS OF THE ATTORNEY GENERAL

Qualification for license under grandfather clause. — Person must have submitted a completed application by September 30, 1983, in order to qualify for a license under the grandfather clause found in O.C.G.A. § 43-14-8(d), and the submission of an application not evidencing the right to be “grandfathered” would not indefinitely preserve the right for licensure under such clause. 1992 Op. Att’y Gen. No. U92-12.

No exemptions for liquefied petroleum licenses. — Persons licensed pursuant to the Liquefied Petroleum Safety Act of Georgia, O.C.G.A. § 10-1-260 et seq., who install, repair, or service conditioned air equipment are not exempt from the requirement of holding a license as a conditioned air contractor under O.C.G.A. § 43-14-8. 1994 Op. Att’y Gen. No. 94-2.

Persons licensed as water well contractors by the Water Well Standards Advisory Council are not required to

hold licenses as electrical or plumbing contractors when, in the course of constructing water wells, the people make certain electrical and plumbing connections at the well site which are incidental to the trade for which the people have been licensed. 1981 Op. Att’y Gen. No. U81-45.

Licensed individual may not qualify more than one partnership company or corporation. 1963-65 Op. Att’y Gen. p. 775.

Utility not subjected to licensure requirements. — Electric utility’s installation of outside electrical lighting fixtures which are attached to or incorporated into non-exempt buildings or structures and which are an integral part of the electrical system of such utility would not subject the utility to the licensure requirements of O.C.G.A. § 43-14-8(f). 1992 Op. Att’y Gen. No. 92-29.

43-14-8.1. License requirement for low-voltage electrical contracting; businesses conducted by partnerships, limited liability companies, and corporations; applications.

(a) For purposes of this Code section only, “division” means the “Division of Low-voltage Contractors.”

(b) No person shall engage in alarm system, general system, or telecommunication system low-voltage contracting unless such person has a valid license therefor from the Division of Low-voltage Contracting.

(c) Any person desiring to qualify under the provisions of this subsection who meets the requirements of this subsection, submits proper application prior to and including December 31, 1984, and pays or has paid the required fees and is not otherwise in violation of this chapter shall be issued a state-wide Low-voltage Contractor Class LV-A, LV-G, LV-U, or LV-T license without examination. An individual

desiring to obtain Low-voltage Contractor Class LV-T shall submit to the division an affidavit which outlines the experience of said individual in the practice of low-voltage wiring relating to telecommunication systems. An individual desiring to obtain a Low-voltage Contractor Class LV-A license shall submit to the division an affidavit which outlines the experience of said individual in the practice of low-voltage wiring relating to alarm systems. An individual desiring to obtain a Low-voltage Contractor Class LV-G license shall submit to the division an affidavit which outlines the experience of said individual in the practice of low-voltage wiring relating to general systems. Each such affidavit for licensure shall describe in detail the installation of at least three complete low-voltage wiring jobs which shall demonstrate that the individual has successfully performed low-voltage wiring in the area of licensure requested for a period of at least one year immediately prior to the time of application. An individual desiring to obtain a Low-voltage Contractor Class LV-U license shall submit to the division an affidavit which outlines the experience of said individual in the practice of low-voltage wiring relating to alarm and telecommunication systems and which describes in detail the installation of at least six complete low-voltage wiring jobs, three in alarm and three in telecommunication systems, which shall demonstrate that the individual has successfully performed low-voltage wiring in those areas for a period of at least one year immediately prior to the time of application.

(d) The decision of the division as to the necessity of taking the examination or as to the qualifications of applicants taking the required examination shall, in the absence of fraud, be conclusive. All individuals, partnerships, limited liability companies, or corporations desiring to engage in the vocation of low-voltage contracting after December 31, 1984, shall take the examination and qualify under this Code section before engaging in such vocation.

(e) No partnership, limited liability company, or corporation shall have the right to engage in the business of low-voltage contracting unless there is regularly connected with such partnership, limited liability company, or corporation a person or persons, actually engaged in the performance of such business on a full-time basis and supervising the low-voltage systems installation, repair, alteration, and service work of all employees of such partnership, limited liability company, or corporation, who have valid licenses issued to them as provided in this chapter. In cases where a partnership, limited liability company, or corporation has more than one office location from which low-voltage contracting is performed, at least one person stationed in each branch office of such partnership, limited liability company, or corporation, engaged in the performance of low-voltage contracting on a full-time basis and supervising the low-voltage wiring systems installation, repair, alteration, and service work of all employees of such branch

office locations, shall have a valid license issued as provided in this Code section.

(f) It shall be the duty of all partnerships, limited liability companies, and corporations qualified under this Code section to notify the division, in accordance with board rules, of severance of connection with such partnership, limited liability company, or corporation of any person or persons upon whom the qualification of any such partnership, limited liability company, or corporation rested.

(g) All applicants for examinations and licenses provided for by this Code section and all applicants for renewal of licenses under this Code section shall be required to fill out a form which shall be provided by the division, which form shall show whether or not the applicant is an individual, partnership, limited liability company, or corporation and, if a partnership, limited liability company, or corporation, the names and addresses of the partners or members or the names and addresses of the officers, when and where formed or incorporated, and such other information as the division in its discretion may require. All forms of application for renewal of licenses shall also show whether or not the applicant, if it is a partnership, limited liability company, or corporation, still has connected with it a duly qualified person holding a license issued by the division.

(h) The division shall notify each local governing authority of the provisions of this chapter relating to licensure, especially the provisions of subsection (b) of this Code section. The division shall notify such governing authorities that after December 31, 1984, any person desiring a license to engage in the vocation of low-voltage contracting shall be required to pass an examination as provided in this chapter. (Code 1981, § 43-14-8.1, enacted by Ga. L. 1984, p. 1129, § 7; Ga. L. 1993, p. 123, § 30; Ga. L. 2002, p. 415, § 43; Ga. L. 2010, p. 266, § 20/SB 195.)

The 2010 amendment, effective May 20, 2010, in subsection (c), deleted “sworn before a notary public” following “affidavit” in the second sentence and deleted “,

sworn before a notary public,” following “affidavit” in the third, fourth, and last sentences.

OPINIONS OF THE ATTORNEY GENERAL

License required for low-voltage contracting. — Licensed electrical contractors desiring to engage in low-voltage contracting must obtain a license from the Low-Voltage Division of the State Construction Industry Licensing Board. 1984 Op. Att’y Gen. No. 84-74.

Basis for issuing license. — Pres-

ently licensed electrical contractors must either submit the evidence required by O.C.G.A. § 43-14-8.1(c) prior to the date specified in the statute (December 31, 1984), or thereafter pass the examination to qualify to receive a low-voltage contracting license. 1984 Op. Att’y Gen. No. 84-74.

43-14-8.2. Utility contractor license; utility manager; business entities; severance of connection with utility manager; unlawful contracts.

(a) For purposes of this Code section only, "division" means the "Division of Utility Contractors."

(b)(1) After June 30, 1994, no sole proprietorship, partnership, or corporation shall have the right to engage in the business of utility contracting unless such business holds a utility contractor license and there is regularly connected with such business a person or persons who holds a valid utility manager certificate issued under this chapter. Such utility manager must be actually engaged in the performance of such business on a full-time basis and oversee the utility contracting work of all employees of the business. In cases where a sole proprietorship, partnership, or corporation has more than one permanent office, then each permanent office shall be registered with the division and at least one person who holds a valid utility manager certificate issued under this chapter shall be stationed in each office on a full-time basis and shall oversee the utility contracting work of all employees of that office.

(2) The requirements of this Code section shall not prevent any person holding a valid license issued by the State Construction Industry Licensing Board, or any division thereof, pursuant to this chapter, from performing any work defined in the Code section or sections under which the license held by said person was issued.

(c) Any corporation, partnership, or sole proprietorship desiring to qualify and be issued a utility contractor license under the provisions of this subsection shall:

(1) Submit a completed application to the division on the form provided indicating:

(A) The names and addresses of proprietor, partners, or officers of such applicant;

(B) The place and date such partnership was formed or such corporation was incorporated; and

(C) The name of the qualifying utility manager holding a current certificate who is employed for each permanent office location of the business from which utility contracting is performed;

(2) Submit its safety policy which must meet the minimum standards established by the board;

(3) Pay or have paid the required fees; and

(4) Not be otherwise in violation of this chapter.

(d) The decision of the division as to the qualifications of applicants shall, in the absence of fraud, be conclusive.

(e) It shall be the duty of the utility manager certificate holders and the licensed utility contractor to notify the division, in accordance with board rules, of severance of connection between such utility contractor and the utility manager certificate holder or holders upon whom the qualification of the utility contractor rested.

(f) In the event that a licensed utility contractor temporarily does not have employed a utility manager certificate holder to oversee its utility contracting work, upon notice by such utility contractor to the division within five days following the last day of employment of the utility manager certificate holder, the division shall grant the utility contractor a 90 day grace period in which to employ a utility manager certificate holder to oversee its utility contracting work before any action may be taken by the division to revoke the utility contractor's license. The division may, at its discretion, upon application by the utility contractor showing good cause grant one additional 90 day grace period. Grace periods totaling not more than 180 days may be granted during any two-year period. Failure to have employed a utility manager certificate holder to oversee the utility contracting work of the utility contractor shall be grounds for the revocation or suspension of the utility contractor license after a notice of hearing.

(g) All applicants for renewal of utility contractor licenses provided for by this Code section shall be required to submit with the required fee a completed application on a form provided by the division.

(h) It shall be unlawful for any person to contract with any other person for the performance of utility contracting work who is known by such person not to have a current, valid license as a utility contractor pursuant to this chapter. (Code 1981, § 43-14-8.2, enacted by Ga. L. 1989, p. 1756, § 7; Ga. L. 1993, p. 123, § 31; Ga. L. 1993, p. 1339, § 7; Ga. L. 1994, p. 1, § 1; Ga. L. 1994, p. 383, § 4; Ga. L. 2004, p. 390, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, "under which the" was substituted for "under the" near the end of paragraph (b)(2).

Editor's notes. — Ga. L. 1994, p. 1, § 4, not codified by the General Assembly, effective February 4, 1994, provided that the provisions of Ga. L. 1993, p. 1339, § 7,

are repealed in their entirety, and any enforcement of those provisions prior to February 4, 1994, is null and void.

Ga. L. 1994, p. 1, was effective February 4, 1994, to March 29, 1994, and was repealed by Ga. L. 1994, p. 383, § 8, not codified by the General Assembly, effective March 29, 1994.

43-14-8.3. Utility manager certificate.

(a) After June 30, 1994, no person may be employed as a utility manager unless that person holds a current utility manager certificate issued by the Division of Utility Contractors.

(b) The division shall certify all applicants for certification under this chapter who satisfy the requirements of this chapter and the rules and regulations promulgated under this chapter. Persons wishing to qualify for utility manager certification shall submit a completed application form documenting required experience and other qualifications as prescribed by the board with the required fees and shall pass an examination. In order to obtain a utility manager certificate, an applicant must submit proof of completion of a course of safety training in utility contracting approved by the division. In order to continue to hold such certificate, the certificate holder must present proof to the division of completion of a safety training course approved by the division at least every two years from the date of the completion of the initial safety training course.

(c) An applicant may request an oral administration of the examination. (Code 1981, § 43-14-8.3, enacted by Ga. L. 1989, p. 1756, § 7; Ga. L. 1993, p. 1339, § 7; Ga. L. 1994, p. 1, § 2; Ga. L. 1994, p. 383, § 5; Ga. L. 2004, p. 390, § 4.)

Editor's notes. — Ga. L. 1994, p. 1, § 4, not codified by the General Assembly, effective February 4, 1994, provided that the provisions of Ga. L. 1993, p. 1339, § 7, are repealed in their entirety, and any enforcement of those provisions prior to February 4, 1994, is null and void.

Ga. L. 1994, p. 1 was effective from February 4, 1994, and was repealed by Ga. L. 1994, p. 383, § 8, not codified by the General Assembly, effective March 29, 1994.

43-14-8.4. Utility foreman certificate; presence of certified utility manager or certified utility foreman required.

(a) After June 30, 1994, no person may be employed as a utility foreman unless that person holds a current utility foreman certificate issued by the Division of Utility Contractors.

(b) The division shall certify all applicants for certification under this chapter who satisfy the requirements of this chapter and the rules and regulations promulgated under this chapter. One requirement for such certification shall be the successful completion of a course of safety training in utility contracting approved by the division. In order to continue to hold such certificate, the certificate holder must submit proof to the division of completion of a safety training course approved by the division at least every two years from the date of the completion of the initial safety training course. In lieu of safety training any person desiring to be issued a utility foreman certificate may submit a completed application on or before December 31, 1994, which documents to the satisfaction of the division at least two years of experience as a utility foreman during the period between January 1, 1984, and June 30, 1994. Any person who does not submit a completed application

for certification on or before December 31, 1994, must complete the required safety training in order to be certified.

(c) After June 30, 1994, no utility system shall be constructed, erected, altered, or repaired unless a certified utility manager or certified utility foreman who holds a current certification is present at the job site of such construction, erection, alteration, or repair of the utility system. (Code 1981, § 43-14-8.4, enacted by Ga. L. 1993, p. 1339, § 7; Ga. L. 1994, p. 1, § 3; Ga. L. 1994, p. 383, § 6; Ga. L. 2004, p. 390, § 5.)

Editor's notes. — Ga. L. 1994, p. 1, § 4, not codified by the General Assembly, effective February 4, 1994, provided that the provisions of Ga. L. 1993, p. 1339, § 7, are repealed in their entirety, and any enforcement of those provisions prior to February 4, 1994, is null and void.

Ga. L. 1994, p. 1 was effective from February 4, 1994, to March 29, 1994, and was repealed by Ga. L. 1994, p. 383, § 8, effective March 29, 1994.

43-14-9. Display of license and registration number.

(a) Every person holding a license issued by a division of the board shall display it in a conspicuous manner at his place of business.

(b) All commercial vehicles used by licensees and certificate holders exclusively in the daily operation of their business shall have prominently displayed thereon the company or business registration number issued by the Secretary of State's office. Such registration number shall also be prominently displayed on any advertising in telephone yellow pages and newspapers relating to work which a licensee or certificate holder purports to have the capacity to perform. Said registration number shall also be printed on all invoices and proposal forms. (Ga. L. 1971, p. 583, § 15; Ga. L. 1980, p. 1299, § 10; Ga. L. 1983, p. 424, § 1; Ga. L. 1991, p. 1581, § 2; Ga. L. 1993, p. 1339, § 8.)

43-14-10. Applicability of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

This chapter shall be administered in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Ga. L. 1980, p. 1299, § 6; Ga. L. 1983, p. 424, § 1.)

43-14-11. Injunction for violation of chapter.

Whenever it shall appear to a division of the board or to the executive director or to a county or municipal inspection authority that any person is or has been violating this chapter or any of the lawful rules, regulations, or orders of the board, the division of the board, the local

inspection authority, or the appropriate prosecuting attorney may file a petition for an injunction in the proper superior court of this state against such person for the purpose of enjoining any such violation. It shall not be necessary to allege or prove that there is no adequate remedy at law. The right of injunction provided for in this Code section shall be in addition to any other legal remedy which the board has and shall be in addition to any right of criminal prosecution provided for by law. (Ga. L. 1971, p. 583, § 18; Ga. L. 1980, p. 1299, § 12; Ga. L. 1981, p. 1703, § 4; Ga. L. 1983, p. 424, § 1; Ga. L. 1994, p. 97, § 43.)

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Injunctions, § 145.

C.J.S. — 43A C.J.S., Injunctions, § 135.

ALR. — Validity of statutory or municipal regulation of heating contractors, 33 ALR 146.

Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 ALR 1388.

Right to enjoin business competitor

from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

43-14-12. Suspension of, or refusal to restore, licenses and certificates by municipal or county inspection authority; appeals; adoption and enforcement of codes at local level; bonds; fees or taxes.

(a) Any municipal or county inspection authority which meets the standards established by the board shall be authorized, after notice and hearing, to suspend the license or certificate of competency of, or refuse to restore a license or certificate of competency to, any person or licensee upon the grounds set out in paragraph (4) of subsection (a) of Code Section 43-14-6; provided, however, that such suspension of a license by a local inspection authority shall be applicable only within the jurisdiction of such local authority. Any person aggrieved by an action of a local authority shall be entitled to an appeal to the appropriate division of the board and shall be entitled to a hearing.

(b)(1) This chapter shall not be construed to prohibit the governing authority of any county or municipality in the state from adopting and enforcing codes at the local level; provided, however, that no county or municipality may require any licensed conditioned air contractor or licensed plumber who has executed and deposited a bond as authorized in paragraph (2) of this subsection to give or furnish or execute any code compliance bond or similar bond for the purpose of ensuring that all construction, installation, or modifica-

tions are made or completed in compliance with the county or municipal ordinances or building and construction codes.

(2) In order to protect the public from damages arising from any work by a licensed conditioned air contractor or licensed plumber, which work fails to comply with the ordinances or building and construction codes adopted by any county or municipal corporation, any such licensed conditioned air contractor or licensed plumber may execute and deposit with the judge of the probate court in the county of his or her principal place of business a bond in the sum of \$10,000.00. Such bond shall be a cash bond of \$10,000.00 or executed by a surety authorized and qualified to write surety bonds in the State of Georgia and shall be approved by the judge of the probate court. Such bond shall be conditioned upon all work done or supervised by such licensee complying with the provisions of any ordinances or building and construction codes of any county or municipal corporation wherein the work is performed. Action on such bond may be brought against the principal and surety thereon in the name of and for the benefit of any person who suffers damages as a consequence of said licensee's work not conforming to the requirements of any ordinances or building and construction codes; provided, however, that the aggregate liability of the surety to all persons so damaged shall in no event exceed the sum of such bond.

(3) In any case where a bond is required under this subsection, the conditioned air contractor or plumber shall file a copy of the bond with the building official in the political subdivision wherein the work is being performed.

(4) The provisions of this subsection shall not apply to or affect any bonding requirements involving contracts for public works as provided in Chapter 10 of Title 13.

(c) No provision of this chapter shall be construed as prohibiting or preventing a municipality or county from fixing, charging, assessing, or collecting any license fee, registration fee, tax, or gross receipt tax on any related business or on anyone engaged in any related business governed by this chapter. (Ga. L. 1981, p. 1703, § 5; Ga. L. 1983, p. 424, § 1; Ga. L. 1993, p. 1339, § 9; Ga. L. 1994, p. 662, § 1.)

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Local fees for licensing journeymen electricians prohibited. — O.C.G.A. Ch. 14, T. 43 prohibits a municipality or county from establishing licensing requirements for journeyman electricians or collecting fees for such licenses. 1987 Op. Att'y Gen. No. 87-3 (rendered prior to 1993 amendment).

Although O.C.G.A. § 43-14-12 allows a municipality or county to charge a "license fee, registration fee, tax, or gross receipt tax on any related business or on anyone engaged in any related business governed by this chapter," such "revenue" measures have been struck down when their underlying intent was to create a licensing re-

quirement as a precondition for engaging in the occupation as opposed to creating a tax on an otherwise-licensed occupation. 1987 Op. Att’y Gen. No. 87-3 (rendered prior to 1993 amendment).

Authority to require liability insurance compliance bonds. — County and municipal governments are prohibited from requiring contractors licensed under O.C.G.A. Ch. 14, T. 43 to obtain liability insurance in order to perform work covered by the license; however, county and

municipal governments may require contractors to obtain code compliance bonds in order to perform work covered by the contractor’s license, provided that the local government may not require such a bond from conditioned air contractors and plumbers who have executed and deposited a bond under O.C.G.A. § 43-14-12(b)(2), and provided that the local ordinance does not otherwise conflict with the general law. 1995 Op. Att’y Gen. No. 95-7.

43-14-12.1. Evidence of violation; cease and desist orders; fines; other penalties for violations.

(a) If a person is in violation of paragraph (1) or (2) of subsection (c) of Code Section 43-14-8, it shall not be necessary for an investigator to observe or witness the unlicensed person engaged illegally in the process of work or to show work in progress or work completed in order to prove the unlawful practice of conditioned air contracting by an unlicensed person.

(b) It shall be prima-facie evidence of a violation of this chapter if any person not licensed as a conditioned air contractor advertises that such person is in the business or profession of a conditioned air contractor or advertises in a manner such that the general public would believe that such person is a licensed conditioned air contractor or in the business or profession of a conditioned air contractor. Advertising under this subsection includes, but is not limited to, newspaper, television, radio, telephone directory, mailings, business cards, or sign at place of business or attached to a vehicle.

(c) Notwithstanding the provisions of Code Section 43-1-20.1, after notice and hearing, the board may issue a cease and desist order prohibiting any person from violating the provisions of this chapter by engaging in the business or profession of a conditioned air contractor without a license as required under this chapter.

(d) The violation of any cease and desist order of the board issued under subsection (c) of this Code section shall subject the person violating the order to further proceedings before the board, and the board shall be authorized to impose a fine not to exceed \$500.00 for each violation thereof. Each day that a person practices in violation of this Code section and chapter shall constitute a separate violation.

(e) Nothing in this Code section shall be construed to prohibit the board from seeking remedies otherwise available by statute without first seeking a cease and desist order in accordance with the provisions of this Code section. (Code 1981, § 43-14-12.1, enacted by Ga. L. 1998, p. 1517, § 1; Ga. L. 2001, p. 883, § 2.)

43-14-12.2. Proof of unlawful practice of utility contracting by unlicensed individual; cease and desist orders; penalty for violations.

(a) If a person is in violation of Code Section 43-14-8.2, 43-14-8.3, or 43-14-8.4, it shall not be necessary for an investigator to observe or witness the unlicensed person engaged illegally in the process of work or to show work in progress or work completed in order to prove the unlawful practice of utility contracting by an unlicensed person.

(b) It shall be prima-facie evidence of a violation of this chapter if any person not licensed as a utility contractor advertises that such person is in the business or profession of a utility contractor or advertises in a manner such that the general public would believe that such person is a licensed utility contractor or in the business or profession of a utility contractor. Advertising under this subsection includes, but is not limited to, newspaper, television, or radio advertisements, telephone directory listings, mailings, business cards, or a sign or signs at a place of business or attached to a vehicle.

(c) Notwithstanding the provisions of Code Section 43-1-20.1, after notice and hearing, the board may issue a cease and desist order prohibiting any person from violating the provisions of this chapter by engaging in the business or profession of a utility contractor without a license as required under this chapter or by constructing, erecting, altering, or repairing a utility system without a properly certified utility manager or properly certified utility foreman present at such job site.

(d) The violation of any cease and desist order of the board issued under subsection (c) of this Code section shall subject the person violating the order to further proceedings before the board, and the board shall be authorized to impose a fine not to exceed \$5,000.00 for each violation thereof. Each day that a person practices in violation of this Code section and chapter or constructs, erects, alters, or repairs a utility system without a properly certified utility manager or properly certified utility foreman present at such job site shall constitute a separate violation.

(e) Nothing in this Code section shall be construed to prohibit the board from seeking remedies otherwise available by statute without first seeking a cease and desist order in accordance with the provisions of this Code section. (Code 1981, § 43-14-12.2, enacted by Ga. L. 2004, p. 390, § 6.)

43-14-13. Applicability of chapter.

(a) This chapter shall apply to all installations, alterations, and repairs of plumbing, air-conditioning and heating, or electrical or

low-voltage wiring or utility systems within or on public or private buildings, structures, or premises except as otherwise provided in this Code section.

(b) Any person who holds a license issued under this chapter may engage in the business of plumbing, electrical contracting, conditioned air contracting, low-voltage contracting, or utility contracting but only as prescribed by the license, throughout the state; and except as provided in Code Section 43-14-12, no municipality or county may require such person to comply with any additional licensing requirements imposed by such municipality or county.

(c) This chapter shall not apply to the installation, alteration, or repair of plumbing, air-conditioning and heating, utility systems, or electrical services, except low-voltage wiring services, up to and including the meters where such work is performed by and is an integral part of the system owned or operated by a public service corporation, an electrical, water, or gas department of any municipality in this state, a railroad company, a pipeline company, or a mining company in the exercise of its normal function as such.

(d) This chapter shall not prohibit an individual from installing, altering, or repairing plumbing fixtures, air-conditioning and heating, air-conditioning and heating fixtures, utility systems, or electrical or low-voltage wiring services in a residential dwelling owned or occupied by such individual; provided, however, that all such work must be done in conformity with all other provisions of this chapter, the rules and regulations of the board, and any applicable county or municipal resolutions, ordinances, codes, or inspection requirements.

(e) This chapter shall not prohibit an individual employed on the maintenance staff of a facility owned by the state or by a county, municipality, or other political subdivision from installing, altering, or repairing plumbing, plumbing fixtures, air-conditioning and heating fixtures, utility systems, or electrical or low-voltage wiring services when such work is an integral part of the maintenance requirements of the facility; provided, however, that all such work must be done in conformity with all other provisions of this chapter and the orders, rules, and regulations of the board.

(f) This chapter shall not prohibit any person from installing, altering, or repairing plumbing, plumbing fixtures, air-conditioning and heating fixtures, utility systems, or electrical or low-voltage wiring services in a farm or ranch service building or as an integral part of any irrigation system on a farm or ranch when such system is not located within 30 feet of any dwelling or any building devoted to animal husbandry. Nothing in this subsection shall be construed to limit the application of any resolution, ordinance, code, or inspection requirements of a county or municipality relating to such connections.

(g) This chapter shall not apply to low-voltage wiring performed by public utilities, except that such portion of the business of those public utilities which involves the installation, alteration, repair, or service of telecommunication systems for profit shall be covered under this chapter.

(h) This chapter shall not apply to the installation, construction, or maintenance of power systems or telecommunication systems for the generation or distribution of electric current constructed under the National Electrical Safety Code, which regulates the safety requirements of utilities; but the interior wiring regulated by the National Electrical Safety Code would not be exempt and must be done by an electrical contractor except as otherwise provided by law.

(i) This chapter shall not apply to any technician employed by a municipal or county-franchised community antenna television (CATV) system or a municipally owned community antenna television system in the performance of work on the system.

(j) This chapter shall not apply to regular full-time employees of an institution, manufacturer, or business who perform plumbing, electrical, low-voltage wiring, utility contracting, or conditioned air work when working on the premises of that employer.

(k) This chapter shall not apply to persons licensed as manufactured or mobile home installers by the state fire marshal when:

(1) Coupling the electrical connection from the service entrance panel outside the manufactured housing to the distribution panel board inside the manufactured housing;

(2) Connecting the exterior sewer outlets to the above-ground sewer system; or

(3) Connecting the exterior water line to the above-ground water system.

(l) Any person qualified by the Department of Transportation to perform work for the department shall not be required to be licensed under Code Section 43-14-8.2 or certified under Code Sections 43-14-8.3 and 43-14-8.4 in order to perform work for the department. Any person qualified by the Department of Transportation to perform work for the department shall not be required to be licensed under Code Section 43-14-8.2 or certified under Code Sections 43-14-8.3 and 43-14-8.4 in order to perform work for a county, municipality, authority, or other political subdivision when such work is of the same nature as that for which the person is qualified when performing department work; provided, however, that such work is not performed on a utility system as defined in paragraph (17) of Code Section 43-14-2 for which the person receives compensation.

(m) This chapter shall not prohibit any person from installing, altering, or repairing the plumbing component of a lawn sprinkler system from a backflow preventer which was installed by a licensed plumber; provided, however, that all such work must be done in conformity with all other provisions of this chapter, the rules and regulations of the board, and ordinances of the county or municipality.

(n) Any person who contracts with a licensed conditioned air contractor as part of a conditioned air contract to install, alter, or repair duct systems, control systems, or insulation is not required to hold a license from the Division of Conditioned Air Contractors. The conditioned air contractor must retain responsibility for completion of the contract, including any subcontracted work. Any person who contracts with a licensed conditioned air contractor to perform a complete installation, alteration, or repair of a conditioned air system must hold a valid license from the Division of Conditioned Air Contractors. Any person who contracts to perform for or on behalf of a conditioned air contractor to install, alter, or repair electrical, low-voltage, or plumbing components of a conditioned air system must hold a valid license from the appropriate division of the board.

(o) This chapter shall not prohibit any propane dealer who is properly insured as required by law and who holds a liquefied petroleum gas license issued by the Safety Fire Commissioner from installing, repairing, or servicing a propane system or the gas piping or components of such system; provided, however, that such propane dealers shall be prohibited from performing the installation of conditioned air systems or forced air heating systems unless licensed to do so under this chapter.

(p) This chapter shall not apply to any employee or authorized agent of a regulated gas utility or municipal owned gas utility while in the course and scope of such employment.

(q) Any utility contractor holding a valid utility contractor's license under this chapter shall be authorized to bid for and perform work on any utility system in this state without obtaining a license under Chapter 41 of this title. It shall be unlawful for the owner of a utility system or anyone soliciting work to be performed on a utility system to refuse to allow a utility contractor holding a valid utility contractor's license under this chapter to bid for or perform work on a utility system on the basis that such contractor does not hold a license under Chapter 41 of this title. (Ga. L. 1980, p. 1299, § 16; Ga. L. 1981, p. 845, § 1; Ga. L. 1981, p. 1703, § 7; Ga. L. 1983, p. 424, § 1; Ga. L. 1984, p. 1129, § 8; Ga. L. 1989, p. 1756, § 8; Ga. L. 1993, p. 1339, § 11; Ga. L. 1994, p. 383, § 7; Ga. L. 1994, p. 662, § 2; Ga. L. 2003, p. 419, § 3; Ga. L. 2010, p. 211, § 1/SB 339.)

The 2010 amendment, effective July 1, 2010, added subsection (q).

Editor's notes. — Former Code Section 43-14-13 was repealed by Ga. L. 1993, p. 1339, § 10, effective April 15, 1993, and was based on Ga. L. 1968, p. 308, § 22; Ga. L. 1980, p. 1299, § 14; Ga. L. 1981,

Ex. Sess., p. 8; and Ga. L. 1983, p. 424, § 1.

Ga. L. 1993, p. 1339, § 11, effective April 15, 1993, renumbered former Code Section 43-14-15 as present Code Section 43-14-13.

JUDICIAL DECISIONS

Septic tank installation, maintenance, or repair is not included within the definition of "plumbing" in O.C.G.A. § 43-14-2 and, as a result, state law does not preempt counties from enacting regulations that specify the qualifications of

persons who install septic tanks. *DeKalb County Bd. of Health v. Lee*, 266 Ga. 507, 467 S.E.2d 564 (1996).

Cited in *Waller v. State Constr. Indus. Licensing Bd.*, 250 Ga. 529, 299 S.E.2d 554 (1983).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1949, p. 1622 are included in the annotations for this Code section.

Employees of state and the state's political subdivisions are not required to be licensed as electrical contractors even though providing services similar to those otherwise provided by electrical contractors for the state or the state's political subdivisions. 1974 Op. Att'y Gen. No. 74-152 (decided under Ga. L. 1949, p. 1622).

Licensing exemption contained in O.C.G.A. § 43-14-13(d), while permitting individuals to install or repair plumbing, air conditioning, heating, electrical wiring or low voltage wiring on single-family dwellings which an individual owns or occupies, does not permit such owners or

occupiers to employ unlicensed persons to perform these activities. Similarly, the exemption contained in O.C.G.A. § 43-14-16(d) [repealed] only allows the unlicensed employees of a general building contractor to perform work upon the business premises of the general contractor and not upon any other property the contractor may own. 1988 Op. Att'y Gen. 88-29.

Local licensing requirements for journeymen electricians prohibited.

— O.C.G.A. Ch. 14, T. 43 prohibits a municipality or county from establishing licensing requirements for journeyman electricians or collecting fees for such licenses. 1987 Op. Att'y Gen. No. 87-3 (decided prior to 1993 amendment of § 43-14-12).

43-14-14. Penalty.

Any person violating this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000.00 or imprisoned for not more than six months, or both. (Ga. L. 1980, p. 1299, § 15; Ga. L. 1983, p. 424, § 1; Code 1981, § 43-14-17; Code 1981, § 43-14-14, as redesignated by Ga. L. 1993, p. 1339, § 13; Ga. L. 2001, p. 883, § 3.)

Editor's notes. — Ga. L. 1993, p. 1339, § 13, effective April 15, 1993, redesignated former Code Section 43-14-17 as present Code Section 43-14-14.

Former Code Section 43-14-14, concerning the effect of this chapter on powers of state departments or agencies, was repealed by Ga. L. 1993, p. 1339, § 10,

effective April 15, 1993 and was based on Ex. Sess., p. 8; and Ga. L. 1983, p. 424, Ga. L. 1980, p. 1299, § 15; Ga. L. 1981, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting. — Georgia Crime Information Center is not authorized to collect and file fingerprints of persons charged with a violation of O.C.G.A. § 43-14-14. 2001 Op. Att'y Gen. No. 2001-11.

43-14-15. Redesignated.

Editor's notes. — Ga. L. 1993, p. 1339, § 11, effective April 15, 1993, redesignated former Code Section 43-14-15 as present Code Section 43-14-13.

43-14-16. Exceptions to operation of chapter.

Repealed by Ga. L. 1993, p. 1339, § 12, effective April 15, 1993.

Editor's notes. — This Code section was based on Ga. L. 1968, p. 308, § 20; Ga. L. 1980, p. 1299, § 13; Ga. L. 1981, p. 844, § 1; Ga. L. 1981, p. 1703, § 6; Ga. L. 1981, Ex. Sess., p. 8; Ga. L. 1983, p. 424, § 1; Ga. L. 1984, p. 1129, § 9; Ga. L. 1989, p. 1600, § 1; Ga. L. 1989, p. 1756, § 9; Ga. L. 1990, p. 8, § 43; Ga. L. 1991, p. 1581, § 3.

43-14-17. Redesignated.

Editor's notes. — Ga. L. 1993, p. 1339, § 13, effective April 15, 1993, redesignated former Code Section 43-14-17 as present Code Section 43-14-14.

43-14-18. Termination.

Repealed by Ga. L. 1992, p. 3137, § 13, effective July 1, 1992.

Editor's notes. — This Code section was part of the original Code enactment (Ga. L. 1981, Ex. Sess., p. 8) and was amended by Ga. L. 1983, p. 424, § 1 and Ga. L. 1989, p. 1617, § 2.

CHAPTER 15

PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Sec.		Sec.	
43-15-1.	Purpose of chapter.	43-15-19.	Revocation, suspension, or denial of certificates or certificates of registration; reprimands.
43-15-2.	Definitions.	43-15-20.	Reissuance of certificates and certificates of registration; fee.
43-15-3.	Creation of board; members.	43-15-21.	Temporary permit.
43-15-4.	Adoption of rules and regulations; meetings; seal; division director as secretary of board.	43-15-22.	Registrant required to obtain seal; inscription; purpose; fraudulent use of seal.
43-15-5.	Duty of board to maintain records.	43-15-23.	Practice of professional engineering by or through firm, corporation, or other entity.
43-15-6.	General powers of board; injunctions; continuing education.	43-15-23.1.	Land surveying firms, corporations, or other entities; application; fee; certificate of authorization.
43-15-7.	Unlawful practice as a professional engineer or land surveyor.	43-15-24.	Construction of structures jeopardizing health, safety, or welfare; exceptions; record of building permits.
43-15-8.	Engineer-in-training certificate; eligibility.	43-15-25.	Procedure for filing charges against certificate holder.
43-15-9.	Professional engineer certificate of registration; eligibility.	43-15-26.	Cease and desist orders; civil penalties for violation of order.
43-15-10.	Evaluation of engineering experience.	43-15-27.	Enforcement of chapter.
43-15-11.	Professional engineer's examination.	43-15-28.	Applicability of the "Georgia Administrative Procedure Act."
43-15-12.	Land surveyor-in-training certificate; eligibility.	43-15-29.	Exceptions to operation of chapter.
43-15-13.	Land surveyor certificate of registration; eligibility.	43-15-30.	Unlawful acts.
43-15-14.	Examinations.	43-15-31.	Termination [Repealed].
43-15-15.	Applications for certificates.		
43-15-16.	Registration by comity.		
43-15-17.	Issuance, expiration, and renewal of certificates and certificates of registration.		
43-15-18.	Effect of certificate of registration.		

Cross references. — Appointment of state highway engineer, § 32-2-42. Conducting surveys for determination of boundaries, T. 44, C. 4.

Administrative rules and regulations. — Organization, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Registration for Professional Engineers and Land Surveyors, Chapter 180-1.

Rules of Professional Conduct, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Registration for Professional Engineers and Land Surveyors, Chapter 180-6.

Law reviews. — For article discussing site architect or engineer's duty of care to construction workers, see 28 Emory L.J. 291 (1979).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the provisions, opinions under Ga. L. 1945, p. 294 are included in the annotations for this chapter.

Licensing required when product of services will be used in another state. — Licensing is required for individuals performing professional engineering services even when the product of such services will be used in another state. 1980 Op. Att'y Gen. No. 80-69.

Engineer may engage in practice of architecture when incidental to engineering. — Engineer is authorized to engage in such practices as may be classified as practice of architecture, in addition to engineering practice, only to the extent

that such practice is clearly incidental to practice of engineering; for example, it appears that an engineer may design, prepare plans for, and supervise construction of dams, sewage disposal plants, water pump stations, power stations, or other similar structures. 1967 Op. Att'y Gen. No. 67-144 (decided under Ga. L. 1945, p. 294, prior to revision by Ga. L. 1975, p. 1048).

License authorizing practice of professional engineering does not authorize land surveying, and vice versa. 1954-56 Op. Att'y Gen. p. 540 (decided under Ga. L. 1945, p. 294, prior to revision by Ga. L. 1975, p. 1048).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional

Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

Constitutionality of statute regulating land surveyors or civil engineers, 55 ALR 307.

Surveyor's liability for mistake in, or misrepresentation as to accuracy of, survey of real property, 35 ALR3d 504.

43-15-1. Purpose of chapter.

This chapter is enacted to safeguard life, health, and property and to promote the public welfare. (Ga. L. 1937, p. 294, § 1; Ga. L. 1945, p. 294, § 2; Code 1933, § 84-2101, enacted by Ga. L. 1975, p. 1048, § 1.)

JUDICIAL DECISIONS

Limitation of liability provision did not violate public policy. — Limitation of liability provision contained in a contract between a real estate developer and

an engineering firm was enforceable because the provision represented a reasonable allocation of risks in an arms-length business transaction and did not violate

the public policy underlying O.C.G.A. § 13-8-2(a) or the public policy for professional engineering practice set forth in O.C.G.A. § 43-15-1 et seq.; the limitation of liability provision did not release the firm from liability for the firm's engineering errors because the firm remained liable to the developer for the firm's errors up to \$50,000, and although the provision capped the firm's liability, the firm remained substantially responsible for the

firm's professional errors and retained the incentive to perform engineering services with due regard for the safety, health, and welfare of the public. *RSN Props. v. Eng'g Consulting Servs.*, 301 Ga. App. 52, 686 S.E.2d 853 (2009), cert. denied, No. S10C0519, 2010 Ga. LEXIS 249 (Ga. 2010).

Cited in *Lanier at McEver, L.P. v. Planners & Eng'rs Collaborative, Inc.*, 284 Ga. 204, 663 S.E.2d 240 (2008).

RESEARCH REFERENCES

ALR. — Constitutionality of statute regulating land surveyors or civil engineers, 55 ALR 307.

43-15-2. Definitions.

As used in this chapter, the term:

(1) "Board" means the State Board of Registration for Professional Engineers and Land Surveyors.

(2) "Certificate" means any certificate issued under Code Section 43-15-8 or 43-15-12.

(3) "Certificate of registration" means any certificate issued under Code Section 43-15-9, 43-15-13, or 43-15-16.

(4) "Current certificate of registration" means a certificate of registration which has not expired or been revoked and the rights under which have not been suspended or otherwise restricted by the board.

(5) "Engineer-in-training" means an individual who meets the qualifications for and to whom the board has duly issued an engineer-in-training certificate.

(6) "Land surveying" means any service, work, or practice, the adequate performance of which requires the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the requirements of relevant law in the evaluation and location of property rights, as applied to:

(A) Measuring and locating lines, angles, elevations, natural and manmade features in the air, on the surface of the earth, in underground works, and on the beds of bodies of water, for the purpose of determining and reporting positions, topography, areas, and volumes;

(B) Establishing or reestablishing, locating or relocating, or setting or resetting of monumentation for any property, easement,

or right of way boundaries, or the boundary of any estate or interest therein;

(C) The platting and layout of lands and subdivisions thereof, including alignment and grades of streets and roads, excluding thoroughfares;

(D) The design, platting, and layout, incidental to subdivisions of any tract of land by a land surveyor, of:

(i) Grading plans and site plans;

(ii) Erosion and sediment control plans, including detention ponds, provided that no impoundment shall be designed on a live (perennial) stream; provided, further, that such detention ponds:

(I) Contain no more than five acre-feet of water storage at maximum pool (top of dam) or are no more than ten feet in height for a dry storage pond;

(II) Are no more than six feet in height for a permanent (wet) storage pond; or

(III) Contain no more than three acre-feet of water storage at maximum pool (top of dam) if the height is more than ten feet but less than 13 feet for a dry storage pond;

(iii) Storm water management plans and facilities, including hydrologic studies and temporary sediment basins, provided that the contributing drainage area shall not be larger than 100 acres; and

(iv) Extension of existing water distribution piping and gravity sewers, eight inches in diameter or smaller, provided that off-site length shall not exceed 1,000 feet, the design and construction of which shall conform to the local government ordinances and regulations, and such extensions shall be subjected to the review and approval of a local government which has been delegated approval authority by the Environmental Protection Division of the Department of Natural Resources;

(E) Conducting horizontal and vertical control surveys, layout or stake-out of proposed construction, or the preparation of as-built surveys which relate to property, easement, or right of way boundaries;

(F) Utilization of measurement devices or systems, such as aerial photogrammetry, geodetic positioning systems, land information systems, or similar technology for evaluation or location of property, easement, or right of way boundaries; or

(G) The preparation and perpetuation of maps, record plats, drawings, exhibits, field notes, or property descriptions representing these services.

(7) "Land surveyor" means an individual who is qualified to engage in the practice of land surveying and who possesses a current certificate of registration as a land surveyor issued by the board. A person shall be construed to practice or offer to practice land surveying within the meaning of this chapter who by verbal claim, sign, advertisement, letterhead, cards, or in any other way represents or holds himself or herself out as able or qualified to perform or who does perform any of the services defined as land surveying.

(8) "Land surveyor-in-training" means an individual who meets the qualifications for and to whom the board has duly issued a certificate as a land surveyor-in-training.

(9) "Person" means an individual and any legal or commercial entity, including, by way of illustration and not limitation, a partnership, corporation, association, or governmental agency.

(10) "Professional engineer" means an individual who is qualified, by reason of knowledge of mathematics, the physical sciences, and the principles by which mechanical properties of matter are made useful to man in structures and machines, acquired by professional education and practical experience, to engage in the practice of professional engineering and who possesses a current certificate of registration as a professional engineer issued by the board.

(11) "Professional engineering" means the practice of the art and sciences, known as engineering, by which mechanical properties of matter are made useful to man in structures and machines and shall include any professional service, such as consultation, investigation, evaluation, planning, designing, or responsible supervision of construction or operation, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects, wherein the public welfare or the safeguarding of life, health, or property is concerned or involved, when such professional service requires the application of engineering principles and data and training in the application of mathematical and physical sciences. A person shall be construed to practice or offer to practice professional engineering, within the meaning of this chapter who by verbal claim, sign, advertisement, letterhead, card, or in any other way represents or holds himself out as a professional engineer or engineer or as able or qualified to perform engineering services or who does perform any of the services set out in this paragraph. Nothing contained in this chapter shall include the work ordinarily performed by persons who operate or maintain machinery or equip-

ment. (Ga. L. 1937, p. 294, § 2; Ga. L. 1945, p. 294, § 4; Code 1933, § 84-2103, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1991, p. 1133, § 1; Ga. L. 1992, p. 3297, § 1; Ga. L. 2003, p. 817, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, “as-built”

was substituted for “as built” in subparagraph (6)(E).

JUDICIAL DECISIONS

Activities set forth in the definition of “land surveying” are not reserved for performance exclusively by land surveyors and nothing in O.C.G.A. § 43-15-2 prohibits the performance of these activities by other qualified professionals who are lawfully authorized to undertake the activities. *Cobb County v. Crusselle*, 274 Ga. 78, 548 S.E.2d 306 (2001).

Surveyor/engineer may prepare topography map and plans and specifications for store. — Surveying and preparing of topography map of lot of prospective customer, and preparing plans and specifications for building to be placed on lot for purpose of selling ice cream and containing machinery, are services comprehended within those which may be performed by a licensed engineer and land surveyor. *Flatauer Fixture &*

Sales Corp. v. Garcia & Assocs., 99 Ga. App. 685, 109 S.E.2d 818 (1959).

No city tax of engineer employee when principal is responsible for final design decisions. — City cannot tax engineers and architects pursuant to Ga. L. 1953, Jan.-Feb. Sess., p. 207, § 1 (see O.C.G.A. § 48-13-5) who, although the engineers and architects hold certificates, work as employees in firms in which principals who were responsible for final design decisions hold certificates. *City of Atlanta v. Georgia Soc’y of Professional Eng’rs*, 220 Ga. 62, 137 S.E.2d 41 (1964).

Cited in Georgia Ass’n of Am. Inst. of Architects v. Gwinnett County, 238 Ga. 277, 233 S.E.2d 142 (1977); *Sembler Atlanta Dev. I, LLC v. URS/Dames & Moore, Inc.*, 268 Ga. App. 7, 601 S.E.2d 397 (2004).

OPINIONS OF THE ATTORNEY GENERAL

Definition of “professional engineering” found in Ga. L. 1975, p. 1048, § 1 (see O.C.G.A. § 43-15-2(11)) includes all professional engineering services regardless of where the product of such services will be utilized. 1980 Op. Att’y Gen. No. 80-69.

Legislature did not intend engineers to plan buildings to same extent as architects. — Extent to which an

engineer may practice should not be determined solely by looking to provisions defining practice of engineering; the legislature did not intend that engineers should be permitted to plan, design, or supervise construction of structures and buildings to the same extent that an architect may do so. 1967 Op. Att’y Gen. No. 67-144.

RESEARCH REFERENCES

ALR. — What amounts to architectural or engineering services within license requirements, 82 ALR2d 1013.

43-15-3. Creation of board; members.

(a) A State Board of Registration for Professional Engineers and Land Surveyors is created whose duty it shall be to administer this chapter.

(b) The board shall consist of six professional engineers, two land surveyors, and a member appointed from the public at large who has no connection with the professions of engineering and land surveying, all of whom shall be appointed by the Governor for a term of five years. Of the professional engineers appointed to the board, one shall be a structural engineer, one shall be a mechanical engineer, one shall be an electrical engineer, two shall be civil or sanitary engineers, and one shall be from any discipline of engineering. Each member of the board shall be a citizen of the United States and a resident of this state.

(c) Each member shall hold office until his successor has been duly appointed and qualified. All successors shall be appointed in the same manner as the original appointment.

(d) A vacancy on the membership of the board shall be filled by appointment by the Governor, in the same manner as the original appointment to the position vacated, for the unexpired term.

(e) Professional engineers appointed to the board shall have been engaged in the practice of engineering in their respective disciplines for at least 12 years and shall have been in responsible charge of important engineering work in their respective disciplines for at least five years. Land surveyors appointed to the board shall have been engaged in the practice of land surveying for at least 12 years and shall have been in responsible charge of important land surveying work for at least five years. Responsible charge of engineering or land surveying teaching may be construed as responsible charge of important engineering or land surveying work, respectively.

(f) Each member of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.

(g) The Governor may remove any member of the board for misconduct, incompetency, neglect of duty, or for any other sufficient and just cause. (Ga. L. 1937, p. 294, § 3; Ga. L. 1945, p. 294, § 5; Ga. L. 1972, p. 222, § 2; Code 1933, § 84-2104, enacted by Ga. L. 1975, p. 1048, § 1; Code 1933, § 84-2104.1, enacted by Ga. L. 1980, p. 968, § 1; Ga. L. 1988, p. 309, § 2; Ga. L. 1990, p. 1491, § 1; Ga. L. 1994, p. 97, § 43.)

43-15-4. Adoption of rules and regulations; meetings; seal; division director as secretary of board.

(a) The board shall adopt all necessary rules, regulations, and bylaws, not inconsistent with this chapter and the Constitution and

laws of this state or of the United States, to govern its times and place of meetings for organization and reorganization, for the holding of examinations, for fixing the length of terms of its officers, and for governing all other matters requisite to the exercise of its powers, the performance of its duties, and the transaction of its businesses. The board shall adopt an official seal.

(b) The board shall meet at such times as the business of the board shall require, as the board or its chairman may determine, but shall hold one annual meeting each year at which time the board shall elect a chairman and a vice chairman.

(c) The board shall be assigned to the office of the division director for those purposes described in Chapter 1 of this title. (Ga. L. 1937, p. 294, § 8; Ga. L. 1945, p. 294, § 11; Code 1933, § 84-2105, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1984, p. 1146, § 1; Ga. L. 2000, p. 1706, § 19.)

Code Commission notes. — Pursuant “vice-chairman” at the end of subsection to Code Section 28-9-5, in 1999, “vice (b). chairman” was substituted for

43-15-5. Duty of board to maintain records.

The board shall keep records of its proceedings. (Ga. L. 1937, p. 294, § 7; Ga. L. 1945, p. 294, § 10; Code 1933, § 84-2108, enacted by Ga. L. 1975, p. 1048, § 1.)

43-15-6. General powers of board; injunctions; continuing education.

(a) In carrying out this chapter, in addition to other powers conferred upon it under this chapter, the board shall have the power:

(1) To adopt and enforce regulations implementing this chapter, including regulations governing the professional conduct of those individuals registered by it;

(2) Under the hand of its chairman or his or her delegate and the seal of the board, to subpoena witnesses and compel their attendance and to require thereby the production of books, papers, documents, and other things relevant to such investigation in order to investigate conduct subject to regulation by the board; the chairman or the member of the board who is his or her delegate may administer oaths to witnesses appearing before the board; and the board may secure the enforcement of its subpoenas in the manner provided by Chapter 13 of Title 50, the “Georgia Administrative Procedure Act”; and

(3) To maintain in its name an action for injunctive or other appropriate legal or equitable relief to remedy violations of this

chapter and, in pursuing equitable remedies, it shall not be necessary that the board allege or prove that it has no adequate remedy at law.

(b) In addition to other powers conferred upon the board under this chapter, the board shall through rules and regulations require each person seeking renewal of a certificate of registration as a professional engineer or a land surveyor to complete board approved continuing education of not more than 30 hours biennially for professional engineers and not more than 15 hours biennially for land surveyors. The board shall be authorized to approve courses offered by institutions of higher learning or offered by other institutions or organizations. The board shall randomly audit some applications for renewal of a certificate of registration to enforce compliance with this subsection. The continuing education requirements adopted by the board shall recognize the continuing education requirements imposed by other states to the extent that such continuing education courses meet the requirements imposed by the board. The board shall be authorized to waive the continuing education requirements in cases of hardship, disability, or illness or under such other circumstances as the board deems appropriate. The board shall waive the continuing education requirement for individuals over the age of 65 who have retired from active practice and who apply for an inactive license and for individuals over the age of 65 who are engaged in the active practice of their profession who have had a valid active license for the previous 25 consecutive years. The requirement for continuing education including the exemptions provided for in this subsection shall apply to each licensing renewal cycle which begins after the 1996 renewal cycle. (Ga. L. 1945, p. 294, § 12; Code 1933, § 84-2106, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1995, p. 860, § 1; Ga. L. 2001, p. 296, § 1.)

Administrative rules and regulations. — Rules of the professions, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of State

Board of Registration for Professional Engineers and Land Surveyors, Chapter 180-1 et seq.

RESEARCH REFERENCES

ALR. — Disqualification, for bias or interest, of member of occupation or pro-

fession sitting in license revocation proceeding, 97 ALR2d 1210.

43-15-7. Unlawful practice as a professional engineer or land surveyor.

(a) It shall be unlawful for any person other than a professional engineer to practice or to offer to practice professional engineering in this state.

(b) It shall be unlawful for any person other than a land surveyor to practice or to offer to practice land surveying in this state. (Code 1933, § 84-2102, enacted by Ga. L. 1975, p. 1048, § 1.)

JUDICIAL DECISIONS

Lawful for qualified architect to engage in engineering practices. — Although it is unlawful for anyone other than a professional engineer to practice professional engineering in Georgia, a qualified architect can engage in engineering practices when such practices are incident to the practice of architecture. *Tomberlin Assocs., Architects, Inc. v. Free*, 174 Ga. App. 167, 329 S.E.2d 296 (1985).

Contracts by unauthorized persons are void. — Mandate of statute requiring license and registration prior to practice of trade or profession is equivalent to a prohibition to engage therein without first complying with the statute's provisions,

whether expressly so stated or not, and whether or not a penalty for such violation is prescribed. A failure to comply with requirements of such statute renders contracts made by those unauthorized to practice such profession void and unenforceable. *Flatauer Fixture & Sales Corp. v. Garcia & Assocs.*, 99 Ga. App. 685, 109 S.E.2d 818 (1959).

If plaintiff, suing for services rendered, is unlicensed, proof of nonlicensure is a defense to action. *Flatauer Fixture & Sales Corp. v. Garcia & Assocs.*, 99 Ga. App. 685, 109 S.E.2d 818 (1959).

OPINIONS OF THE ATTORNEY GENERAL

Construed with O.C.G.A. §§ 36-7-2 and 36-7-9. — County surveyor who is not registered by the State Board of Registration for Professional Engineers and Land Surveyors may not, under any authority, engage in the private practice of land surveying outside of the county in which the surveyor was elected; nor may the surveyor engage in the private practice of land surveying in the county of election unless the surveyor was duly elected and holding office on June 30, 1986, and has continued, uninterrupted, to hold such office. 1990 Op. Att'y Gen. No. 90-13.

Limitations are imposed on right to secure free licenses to engage in business. 1954-56 Op. Att'y Gen. p. 909.

Government surveyors and engi-

neers need not register. — Law does not apply to officers and employees of government of United States while engaged within this state in practice of professional engineering or surveying for government. 1962 Op. Att'y Gen. p. 386.

Affirmation by owner on existing property surveys permitted. — Person who, as part of a refinancing transaction, signs a land survey affidavit in which the person makes certain affirmations about an existing survey of property owned by that person in order to induce a title insurance company to issue a title insurance policy to the lender is not practicing as a land surveyor in violation of O.C.G.A. § 43-15-7(b). 1994 Op. Att'y Gen. No. 94-10.

RESEARCH REFERENCES

ALR. — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

43-15-8. Engineer-in-training certificate; eligibility.

To be eligible for certification as an engineer-in-training, an applicant must meet the following minimum requirements:

(1)(A) Graduate in an engineering curriculum of not less than four years from a school or college approved by the board; and

(B) Pass a written examination in fundamental engineering subjects (engineer-in-training examination);

(2)(A) Graduate in an engineering curriculum of not less than four years or in a curriculum of four or more years in engineering technology or related science, from a school or college approved by the board; and

(B) Pass a written examination in fundamental engineering subjects (engineer-in-training examination); or

(3)(A) Acquire not less than eight years of experience in engineering work of a nature satisfactory to the board; and

(B) Pass a written examination in fundamental engineering subjects (engineer-in-training examination). (Code 1933, § 84-2110, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1982, p. 3, § 43; Ga. L. 2002, p. 415, § 43.)

JUDICIAL DECISIONS

Cited in Lanier at McEver, L.P. v. Planners & Eng'rs Collaborative, Inc., 284 Ga. 204, 663 S.E.2d 240 (2008).

43-15-9. Professional engineer certificate of registration; eligibility.

To be eligible for a certificate of registration as a professional engineer, an applicant must meet the following minimum requirements:

(1)(A) Obtain certification by the board as an engineer-in-training under paragraph (1) of Code Section 43-15-8;

(B) Acquire a specific record of not less than four years' experience in engineering work of a character satisfactory to the board which indicates the applicant is competent to practice professional engineering; and

(C) Subsequently pass a written examination in the principles and practice of engineering (professional engineer's examination);

(2)(A) Obtain certification by the board as an engineer-in-training under paragraph (2) of Code Section 43-15-8;

(B) Acquire a specific record of not less than seven years' experience in engineering work of a character satisfactory to the board which indicates the applicant is competent to practice professional engineering; and

(C) Subsequently pass a written examination in the principles and practice of engineering (professional engineer's examination);

(3)(A) Obtain certification by the board as an engineer-in-training under paragraph (3) of Code Section 43-15-8;

(B) Acquire a specific record of not less than seven years' experience in engineering work of a character satisfactory to the board which indicates the applicant is competent to practice professional engineering; and

(C) Subsequently pass a written examination in the principles and practice of engineering (professional engineer's examination); or

(4)(A) Graduate in an engineering or related science curriculum of not less than four academic years;

(B) Acquire a specific record of not less than 16 years' experience in engineering work, of which at least eight years have been in responsible charge of important engineering work of a character satisfactory to the board, which indicates the applicant is competent to practice professional engineering; and

(C) Subsequently pass a written examination in the principles and practice of engineering (professional engineer's examination). (Code 1933, § 84-2111, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1984, p. 1146, § 2; Ga. L. 1999, p. 81, § 43; Ga. L. 2002, p. 415, § 43.)

JUDICIAL DECISIONS

Cited in *Sembler Atlanta Dev. I, LLC v. McEver, L.P. v. Planners & Eng'rs Collaborative, Inc.*, 284 Ga. 204, 663 S.E.2d 240 (2008).
URS/Dames & Moore, Inc., 268 Ga. App. 7, 601 S.E.2d 397 (2004); *Lanier at* (2008).

43-15-10. Evaluation of engineering experience.

(a) For the purpose of determining whether an applicant has acquired the experience required under Code Section 43-15-8 or 43-15-9:

(1) Responsible charge of engineering teaching may, in the board's sole discretion, be considered as responsible charge of engineering work;

(2) The satisfactory completion of each academic year of an approved course in engineering or engineering technology in a school or

college approved by the board, without graduation, may be considered as equivalent to a year of engineering experience;

(3) Partial credit may be granted by the board for the successful completion of one or more scholastic years of a four-year engineering curriculum in a school or college not approved by the board or in a curriculum in related science in a school or college approved by the board. The degree of credit shall be determined by the board upon consideration of the mathematics, science, and engineering courses completed by the applicant;

(4) No applicant shall receive experience credit for more than four years of undergraduate education; and

(5) The satisfactory completion of graduate study in an approved engineering curriculum may, in the board's sole discretion, be credited for not more than one year's experience.

(b) The execution, as a contractor, of work designed by a professional engineer or the supervision of the construction of such work as foreman, inspector, or superintendent shall not be deemed to be engineering experience unless such work involves the application of engineering principles and the applicant presents evidence of additional engineering experience of a character satisfactory to the board and indicating the applicant is competent to be placed in responsible charge of engineering work. (Ga. L. 1937, p. 294, § 13; Ga. L. 1945, p. 294, § 20; Code 1933, § 84-2112, enacted by Ga. L. 1975, p. 1048, § 1.)

43-15-11. Professional engineer's examination.

An applicant for the professional engineer's examination shall designate the special branch of engineering in which the applicant proposes to engage. The scope of the professional engineer's examination administered to him shall be prescribed by the board with respect to that branch of engineering, with special reference to the applicant's ability to design and supervise engineering work so as to ensure the safety of life, health, and property. (Code 1933, § 84-2113, enacted by Ga. L. 1975, p. 1048, § 1.)

JUDICIAL DECISIONS

Cited in *Sembler Atlanta Dev. I, LLC v. URS/Dames & Moore, Inc.*, 268 Ga. App. 7, 601 S.E.2d 397 (2004).

43-15-12. Land surveyor-in-training certificate; eligibility.

To be eligible for certification as a land surveyor-in-training, an applicant must meet the following minimum requirements:

(1)(A) Earn a bachelor's degree in a curriculum approved by the board;

(B) Earn an associate degree, or its equivalent, in a curriculum approved by the board and acquire not less than two years of combined office and field experience in land surveying of a nature satisfactory to the board; or

(C) Earn a high school diploma, or its equivalent, and acquire not less than four years' experience in land surveying of a nature satisfactory to the board;

(2) Acquire a minimum of 15 quarter hours' credit, or its equivalent, in land surveying subjects in a course of study approved by the board; provided, however, that on and after January 1, 1995, the minimum requirement shall be 20 quarter hours' credit, five of which shall be in hydrology; and

(3) Subsequently pass the board approved examination in the fundamentals of land surveying (land surveyor-in-training examination). (Code 1933, § 84-2114, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1981, p. 763, § 1; Ga. L. 1992, p. 3297, § 2; Ga. L. 2010, p. 266, § 21/SB 195.)

The 2010 amendment, effective May 20, 2010, deleted "or" at the end of subparagraph (1)(A); in subparagraph (1)(C), inserted a comma, and deleted "and" at

the end; and substituted "board approved examination" for "board's written examination" in the middle of paragraph (3).

43-15-13. Land surveyor certificate of registration; eligibility.

To be eligible for a certificate of registration as a land surveyor, an applicant must meet the following minimum requirements:

(1)(A) Obtain certification as a land surveyor-in-training under subparagraph (A) of paragraph (1) and paragraph (3) of Code Section 43-15-12;

(B) Acquire a specific record of the equivalent of not less than four years of combined office and field experience in land surveying with a minimum of three years' experience in responsible charge of land surveying projects under the supervision of a registered land surveyor or such other supervision deemed by the board to be the equivalent thereof; and

(C) Subsequently pass a written examination on the principles and practices of land surveying and the laws of this state relating to land surveying (land surveyor examination);

(2)(A) Obtain certification as a land surveyor-in-training under subparagraph (B) of paragraph (1) and paragraph (3) of Code Section 43-15-12;

(B) Acquire an additional specific record of the equivalent of not less than four years of combined office and field experience in land surveying which, together with the qualifying experience under subparagraph (B) of paragraph (1) of Code Section 43-15-12, includes not less than four years' experience in responsible charge of land surveying projects under the supervision of a registered land surveyor or such other supervision deemed by the board to be the equivalent thereof; and

(C) Subsequently pass a written examination on the principles and practices of land surveying and the laws of Georgia relating to land surveying (land surveyor examination); or

(3)(A) Obtain certification as a land surveyor-in-training under subparagraph (C) of paragraph (1) and paragraph (3) of Code Section 43-15-12;

(B) Acquire an additional specific record of not less than four years of experience in land surveying which, together with the qualifying experience under subparagraph (C) of paragraph (1) of Code Section 43-15-12, includes not less than six years' experience in responsible charge of land surveying under the supervision of a registered land surveyor or such other supervision deemed by the board to be the equivalent thereof and of a grade and character satisfactory to the board indicating that the applicant is competent to practice land surveying; and

(C) Subsequently pass a written examination on the principles and practices of land surveying and laws of this state relating to land surveying (land surveyor examination). (Code 1933, § 84-2115, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1981, p. 763, § 2; Ga. L. 1992, p. 3297, § 3; Ga. L. 2002, p. 415, § 43.)

Cross references. — Performance of duties of county surveyor by person holding current and valid certificate of registration as a land surveyor, § 36-7-13.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "subparagraph (A) of paragraph (1)" was substituted for "subparagraph (A)(1)" in sub-

paragraph (1)(A), "subparagraph (B) of paragraph (1)" was substituted for "subparagraph (B)(1)" in subparagraphs (2)(A) and (2)(B), and "subparagraph (C) of paragraph (1)" was substituted for "subparagraph (C)(1)" in subparagraphs (3)(A) and (3)(B).

43-15-14. Examinations.

Board approval of an applicant for examination entitles the applicant to admission to the next four consecutive examination offerings without reapplication. Following the first offering to which the applicant is entitled to admission, the applicant shall not be admitted to any of the succeeding three examination offerings except upon payment of a fee for each examination, to be determined by the board. Admission to any

future examinations will be at the discretion of the board which may require the applicant to file a new application. An examination offering occurs regardless of whether the applicant attends. (Ga. L. 1937, p. 294, § 15; Ga. L. 1945, p. 294, § 24; Ga. L. 1958, p. 358, § 1; Code 1933, § 84-2116, enacted by Ga. L. 1975, p. 1048, § 1.)

43-15-15. Applications for certificates.

(a) Applications for certificates and for certificates of registration shall be made under oath to the board and shall contain such information in the form and manner as shall be prescribed by the board. The application shall be accompanied by a fee in an amount prescribed by the board.

(b) No individual shall be eligible for a certificate or a certificate of registration under this chapter who is not of good character and reputation.

(c) If the board denies an application on the ground that the applicant lacks the requisite experience to admit him to the examination, the board may impose on the applicant a period of deferment on the filing of a new application, during which period the board shall not be required to accept for filing a new application by the applicant. The period of deferment shall not exceed the time reasonably required to acquire the requisite experience.

(d) An application shall contain the names of not less than five persons, not related to the applicant by blood or marriage, of whom at least three shall be professional engineers or land surveyors having personal knowledge of the experience on which the applicant predicates his qualifications.

(e) Experience required under this chapter shall be of a character and nature approved by the board and consistent with the purposes of this chapter. (Ga. L. 1937, p. 294, § 14; Ga. L. 1945, p. 294, § 22; Code 1933, § 84-2109, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1984, p. 1146, § 3.)

43-15-16. Registration by comity.

(a) The board may, in its discretion, upon application therefor and the payment of a fee prescribed by the board, issue a certificate of registration as a professional engineer to any individual who holds a certificate of qualification or registration issued to him by proper authority of the National Council of Engineering Examiners or of any state or territory or possession of the United States if the requirements of the registration of professional engineers under which the certificate of qualification or registration was issued do not conflict with this

chapter and are of a standard not lower than that specified in this chapter or if the applicant held such certificate on or before July 1, 1956. The fact that the statute under which the individual was issued a certificate of qualification or registration in another state does not provide that the required written examination be passed subsequent to the acquisition of the required experience shall not be deemed as a conflict with, or lower than, the Georgia requirements, provided that the written examination and the amount of experience required for registration are substantially equivalent to the Georgia requirements.

(b) The board may, in its discretion, upon application therefor and the payment of a fee prescribed by the board, issue a certificate of registration as a land surveyor to any person who holds a certificate of registration to practice land surveying issued by a state or territory or possession of the United States obtained:

(1) By written examination of not less than eight hours in duration prior to July 1, 1968;

(2) By written examination of not less than 16 hours in duration prior to July 1, 1978; or

(3) Under qualifications comparable to those prescribed by this chapter; and

in addition passes a written examination on the laws of Georgia relating to land surveying (land surveyor examination). (Code 1933, § 84-2117, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1984, p. 1146, § 4.)

Cross references. — Cooperation between Georgia and other states generally, T. 28, C. 6.

RESEARCH REFERENCES

ALR. — Right of architect or engineer licensed in one state to recover compensation for services rendered in another state, or in connection with construction in another state, where he was not licensed, in the latter state, 32 ALR3d 1151.

43-15-17. Issuance, expiration, and renewal of certificates and certificates of registration.

(a) Certificates and certificates of registration shall be issued to applicants who successfully complete the respective requirements therefor upon the payment of fees prescribed by the board.

(b) Certificates of registration shall be renewable biennially. Renewal may be effected for the succeeding two years by the payment of the fee prescribed by the board. Certificates of registration may be renewed subsequent to their expiration upon the payment of accumu-

lated unpaid fees and of a penalty in an amount to be determined by the board. A certificate of registration which has been expired for a period of greater than four years shall be automatically revoked.

(c) The division director shall give notice by mail to each person holding a certificate of registration under this chapter of the date of the expiration of the certificate of registration and the amount of the fee required for renewal, at least one month prior to the expiration date; but the failure to receive such notice shall not avoid the expiration of any certificate of registration not renewed in accordance with this Code section. (Ga. L. 1937, p. 294, §§ 16, 17; Ga. L. 1945, p. 294, §§ 25, 27, 28; Ga. L. 1956, p. 691, § 1; Ga. L. 1958, p. 358, § 2; Ga. L. 1972, p. 222, § 9; Code 1933, § 84-2118, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 2000, p. 1706, § 19.)

OPINIONS OF THE ATTORNEY GENERAL

Expiration of renewal right for licensees whose licenses expired December 31, 1976, is subject to this section. 1977 Op. Att'y Gen. No. 77-50 (see O.C.G.A. § 43-15-17).

All licenses which have been expired more than five years are irretrievably lost; those licenses which expired prior to July 1, 1975, but which have not been expired for five years, may be renewed by the holder by complying with provisions of this section, as those licensees have a vested right to renew their licenses at any time within five years of the date of expiration, which right the licenses could not be deprived of by subsequent legislation, and rights of all other licensees are controlled by provisions of the statute. 1977 Op. Att'y Gen. No. 77-50 (see O.C.G.A. § 43-15-17).

Earliest dates for automatic revocation following renewal. — As the initial expiration date for any certificate of registration under registration law was December 31, 1976, and as this section provides that certificates of registration are to be automatically revoked when they have been expired for a period of greater than four years, the earliest date for automatic revocation of a certificate of registration would be January 1, 1981, in the event a person renewed a certificate of registration for the period January 1, 1977 through December 31, 1978, that certificate of registration could likewise not be automatically revoked prior to January 31, 1983. 1977 Op. Att'y Gen. No. 77-37 (see O.C.G.A. § 43-15-17).

RESEARCH REFERENCES

ALR. — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

43-15-18. Effect of certificate of registration.

(a) In the case of a registered professional engineer, the certificate of registration shall authorize the practice of professional engineering. In the case of a registered land surveyor, the certificate of registration shall authorize the practice of land surveying. A certificate of registration shall show the full name of the registrant, shall have a serial

number, and shall be signed by the chairman of the board and the division director under the seal of the board.

(b) The issuance of a certificate of registration by the board shall be evidence that the person named therein is entitled to all the rights and privileges of a registered professional engineer or a registered land surveyor, as the case may be, as long as the certificate remains unrevoked, unexpired, or unaffected by other discipline imposed by the board. (Code 1933, § 84-2120, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 2000, p. 1706, § 19.)

JUDICIAL DECISIONS

Cited in Lanier at McEver, L.P. v. Planners & Eng'rs Collaborative, Inc., 284 Ga. 204, 663 S.E.2d 240 (2008).

43-15-19. Revocation, suspension, or denial of certificates or certificates of registration; reprimands.

(a) The board shall have the power, after notice and hearing, to deny any application made to it, to revoke or suspend any certificate or certificate of registration issued by it, or to reprimand any person holding a certificate or certificate of registration issued by it, upon the following grounds:

(1) Commission of any fraud or deceit in obtaining a certificate or certificate of registration;

(2) Any gross negligence, incompetency, or unprofessional conduct in the practice of professional engineering or land surveying as a registered professional engineer or land surveyor;

(3) Affixing a seal to any plan, specification, plat, or report contrary to Code Section 43-15-22;

(4) Conviction of a felony or crime involving moral turpitude in the courts of this state, the United States, or of any state or territory of the United States or the conviction of an offense in another jurisdiction which, if committed in this state, would be deemed a felony. "Conviction" shall include a finding or verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon pursuant to Article 3 of Chapter 8 of Title 42 or any comparable rule or statute; or

(5) Any violation of this chapter or any rule or regulation promulgated by the board pursuant to the powers conferred on it by this chapter.

(b) "Unprofessional conduct," as referred to in paragraph (2) of subsection (a) of this Code section, includes a violation of those standards of professional conduct for professional engineers and land surveyors adopted by the board pursuant to the power conferred upon it to promulgate rules and regulations to effectuate the duties and powers conferred on it by this chapter. (Ga. L. 1937, p. 294, § 22; Ga. L. 1945, p. 294, § 34; Ga. L. 1972, p. 222, § 13; Code 1933, § 84-2126, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1982, p. 3, § 43.)

Law reviews. — For article on the effect on receiving government-issued licenses after a conviction based on a nolo contendere plea, see 13 Ga. L. Rev. 723 (1979).

RESEARCH REFERENCES

ALR. — Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 ALR 1388. Surveyor's liability for mistake in, or misrepresentation as to accuracy of, survey of real property, 35 ALR3d 504. Revocation or suspension of license of professional engineer, 64 ALR3d 509.

43-15-20. Reissuance of certificates and certificates of registration; fee.

(a) The board, in its sole discretion, may reissue a certificate or a certificate of registration to any person whose certificate or certificate of registration has been revoked or may terminate any suspension imposed by it upon the affirmative vote of a majority of the members of the board and upon the payment of a fee prescribed by the board.

(b) A new certificate or certificate of registration to replace any certificate lost, destroyed, or mutilated may be issued subject to the rules of the board upon the payment of a fee prescribed by the board. (Ga. L. 1937, p. 294, § 22; Ga. L. 1945, p. 294, § 36; Code 1933, § 84-2128, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1992, p. 3297, § 4.)

43-15-21. Temporary permit.

(a) The board, or its delegate, in its sole discretion, may issue a temporary permit to a person who is not a resident of and who has no established place of business in this state, or who has recently become a resident thereof, to permit him, in accordance with the conditions of the temporary permit, to practice or offer to practice engineering in this state if:

(1) An application for a certificate of registration has been filed with the board and the fee required by this chapter has been paid;

(2) The applicant is legally qualified to practice such profession in the state or country of the applicant's residence or former residence; and

(3) The requirements and qualifications for obtaining a certificate of registration in that jurisdiction are not lower than those specified in this chapter.

(b) An application under subsection (a) of this Code section shall be made to the board in writing, containing such information and in the form and manner as shall be prescribed by the board.

(c) The temporary permit shall continue only for such time as the board requires for the consideration of the application for registration. The temporary permit shall contain such conditions with respect to the scope of the permission granted as the board deems necessary or desirable.

(d) Plans, specifications, plats, and reports issued by a person holding a temporary permit shall bear his signature and a stamp containing his name, business address, and "Georgia Professional Engineer Temporary Permit No. ____." The signature and stamp shall be affixed only in accordance with the requirements of subsection (b) of Code Section 43-15-22.

(e) A person who has obtained a temporary permit and practices in accordance therewith is deemed to be a professional engineer for purposes of this chapter, but a temporary permit shall not be deemed to be a registration under any provision of this chapter, including, by way of illustration and not limitation, Code Section 43-15-23. (Code 1933, § 84-2122, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1984, p. 1146, §§ 5, 6.)

RESEARCH REFERENCES

ALR. — Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 ALR 1388.

43-15-22. Registrant required to obtain seal; inscription; purpose; fraudulent use of seal.

(a) Every engineer and land surveyor registered under this chapter shall, upon receipt of a certificate of registration, obtain a seal of the design authorized by the board, bearing the registrant's name, certificate number, and the legend "Registered Professional Engineer," or "Registered Land Surveyor," in accordance with the certificate of registration.

(b) Plans, specifications, plats, and reports issued by a registrant shall be stamped or sealed and countersigned by the registrant; but it shall be unlawful for the registrant or any other person to stamp or seal any document with such seal after the certificate of the registrant named thereon has expired, or has been revoked, or during the period of any suspension imposed by the board. No plans, specifications, plats, or reports shall be stamped with the seal of a registrant unless such registrant has personally performed the engineering or land surveying work involved or, when the registrant has not personally performed the engineering or land surveying work reflected in any plan, specification, plat, or report, such registrant has affixed his or her seal thereto only if such document has been prepared by an employee or employees under the registrant's direct supervisory control on a daily basis and after the registrant has thoroughly reviewed the work embodied in such document and has satisfied himself or herself completely that such work is adequate.

(c) No registrant shall affix his seal to any plan, specification, plat, or report unless he has assumed the responsibility for the accuracy and adequacy of the work involved.

(d) Any registrant who has affixed his or her seal to any plan, specification, plat, or report prepared by another person not under the registrant's direct supervisory control on a daily basis, and without having thoroughly reviewed such work, shall be deemed to have committed a fraudulent act of misconduct in the practice of professional engineering or land surveying. (Ga. L. 1937, p. 294, § 16; Ga. L. 1945, p. 294, § 26; Ga. L. 1972, p. 222, § 8; Code 1933, § 84-2121, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1992, p. 3297, § 5.)

Law reviews. — For article surveying real property, see 34 Mercer L. Rev. 255 (1982).

JUDICIAL DECISIONS

Liability of surveyor. — Surveyor is responsible to the public for the accuracy of the surveying work reflected therein, and the surveyor may accordingly be held liable to purchasers damaged by reasonable reliance upon the plat. *Hutchinson v. Dubeau*, 161 Ga. App. 65, 289 S.E.2d 4 (1982).

Plat not a "sealed instrument". — Plat signed by the surveyor with a seal attached did not qualify as an "instrument under seal" governed by the 20-year statute of limitation. *Landmark Eng'g, Inc. v. Cooper*, 222 Ga. App. 752, 476 S.E.2d 63 (1996).

RESEARCH REFERENCES

C.J.S. — 78A C.J.S., Seals, § 2.

43-15-23. Practice of professional engineering by or through firm, corporation, or other entity.

(a) The practice of or offer to practice professional engineering, as defined in this chapter, by individual professional engineers registered under this chapter through a firm, corporation, professional corporation, partnership, association, or other entity offering engineering services to the public or by a firm, corporation, professional corporation, partnership, association, or other entity offering engineering services to the public through individual registered professional engineers as agents, employees, officers, members, or partners is permitted subject to the provisions of this chapter; provided, however, that one or more of the principals, officers, members, or partners of said firm, corporation, professional corporation, partnership, association, or other entity and all personnel of such firm, corporation, partnership, association, or entity who act in its behalf as professional engineers in this state shall be registered as provided in this chapter; and further provided that said firm, corporation, professional corporation, partnership, association, or entity has been issued a certificate of authorization by the board as provided in this chapter.

(b) A firm, corporation, professional corporation, partnership, association, or other entity desiring a certificate of authorization shall file with the board an application upon a form to be prescribed by the board and accompanied by the registration fee prescribed by the board.

(c)(1) A corporation or professional corporation shall file with the board, using a form provided by the board, the names and addresses of all officers and board members of the corporation, including the principal officer or officers duly registered to practice professional engineering in this state and of an individual or individuals duly registered to practice professional engineering within this state who shall be in responsible charge of the practice of professional engineering in this state by said corporation.

(2) A partnership shall file with the board, using a form provided by the board, the names and addresses of all partners of the partnership, including the partner or partners duly registered to practice professional engineering in this state and of an individual or individuals duly registered to practice professional engineering in this state who shall be in responsible charge of the practice of professional engineering in this state by said partnership.

(3) Any firm, limited liability company, association, or entity which is not a corporation, professional corporation, or partnership shall file with the board, using a form provided by the board, the names and addresses of all principals or members of the firm, association, or entity duly registered to practice professional engineering in this

state who shall be in responsible charge of the practice of professional engineering in this state by said firm, association, or other entity.

(4) The forms provided in paragraphs (1) through (3) of this subsection must accompany a biennial renewal fee prescribed by the board. In the event there shall be a change in any of these persons, such change shall be designated on the same form and filed with the board by the firm, corporation, professional corporation, partnership, association, or entity within 30 days after the effective date of the change.

(d)(1) After all of the requirements of this Code section have been complied with, the board shall issue to such firm, corporation, professional corporation, partnership, association, or other entity a certificate of authorization.

(2) The board may refuse to issue a certificate if any facts exist which would entitle the board to suspend or revoke an existing certificate or if the board shall determine that any of the officers, directors, principals, members, agents, or employees of the entity to be licensed are not persons of good character. (Ga. L. 1937, p. 294, § 19; Ga. L. 1945, p. 294, § 29; Ga. L. 1972, p. 222, § 10; Code 1933, § 84-2123, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1982, p. 2269, § 1; Ga. L. 1990, p. 1491, § 2; Ga. L. 1993, p. 123, § 32.)

Cross references. — Professional associations generally, T. 14, C. 10.

JUDICIAL DECISIONS

Cited in *Sembler Atlanta Dev. I, LLC v. URS/Dames & Moore, Inc.*, 268 Ga. App. 7, 601 S.E.2d 397 (2004).

43-15-23.1. Land surveying firms, corporations, or other entities; application; fee; certificate of authorization.

(a) The practice of or offer to practice land surveying, as defined in this chapter, by individual land surveyors registered under this chapter through a firm, corporation, professional corporation, partnership, association, or other entity offering land surveying services to the public or by a firm, corporation, professional corporation, partnership, association, or other entity offering land surveying services to the public through individual registered land surveyors as agents, employees, officers, members, or partners is permitted subject to the provisions of this chapter; provided, however, that one or more of the principals, officers, members, or partners of said firm, corporation, professional corporation, partnership, association, or other entity and all personnel of such firm, corporation, professional corporation, partnership, associ-

ation, or entity who act in its behalf as land surveyors in this state shall be registered as provided in this chapter; and further provided that said firm, corporation, professional corporation, partnership, association, or entity has been issued a certificate of authorization by the board as provided in this chapter.

(b) A firm, corporation, professional corporation, partnership, association, or other entity desiring a certificate of authorization shall file with the board an application upon a form to be prescribed by the board and accompanied by the registration fee prescribed by the board.

(c)(1) A corporation or professional corporation shall file with the board, using a form provided by the board, the names and addresses of all officers and board members of the corporation, including the principal officer or officers duly registered to practice land surveying in this state and of an individual or individuals duly registered to practice land surveying within this state who shall be in responsible charge of the practice of land surveying in this state by said corporation.

(2) A partnership shall file with the board, using a form provided by the board, the names and addresses of all partners of the partnership, including the partner or partners duly registered to practice land surveying in this state and of an individual or individuals duly registered to practice land surveying in this state who shall be in responsible charge of the practice of land surveying in this state by said partnership.

(3) Any firm, limited liability company, association, or entity which is not a corporation, professional corporation, or partnership shall file with the board, using a form provided by the board, the names and addresses of all principals or members of the firm, association, or entity duly registered to practice land surveying in this state who shall be in responsible charge of the practice of land surveying in this state by said firm, association, or other entity.

(4) The forms provided in paragraphs (1) through (3) of this subsection must accompany a biennial renewal fee prescribed by the board. In the event there shall be a change in any of these persons, such change shall be designated on the same form and filed with the board by the firm, corporation, professional corporation, partnership, association, or entity within 30 days after the effective date of the change.

(d)(1) After all of the requirements of this Code section have been complied with, the board shall issue to such firm, corporation, professional corporation, partnership, association, or other entity a certificate of authorization.

(2) The board may refuse to issue a certificate if any facts exist which would entitle the board to suspend or revoke an existing

certificate or if the board shall determine that any of the officers, directors, principals, members, agents, or employees of the entity to be licensed are not persons of good character.

(3) Every firm, partnership, corporation, or other entity which performs or offers to perform surveying services shall have a resident registered land surveyor in responsible charge in each separate branch office in which surveying services are performed or offered to be performed. A resident means a registrant who spends the majority of his or her normal working time at his or her place of business. The registrant can be the resident licensee at only one place of business at one time. (Code 1981, § 43-15-23.1, enacted by Ga. L. 1990, p. 1491, § 3; Ga. L. 1992, p. 3297, § 6; Ga. L. 1993, p. 123, § 33.)

43-15-24. Construction of structures jeopardizing health, safety, or welfare; exceptions; record of building permits.

(a) It shall be unlawful for this state or any of its political subdivisions such as a county, municipality, or school district, or agencies thereof, or for any private or commercial entity to engage in the construction of any work or structures involving professional engineering which by the nature of their function or existence could adversely affect or jeopardize the health, safety, or welfare of the public unless the plans and specifications have been prepared under the direct supervision or review of and bear the seal of, and the construction is executed under the direct supervision of or review by, a registered professional engineer or architect.

(b) Nothing in this Code section shall be held to apply to any construction, including alterations, of which the completed cost is less than \$100,000.00 or which is used exclusively for private or noncommercial purposes, or to private residences, or to noncommercial farm buildings, or to residence buildings not exceeding two stories in height, excluding basements.

(c) Any county, municipality, or other governing body in this state that issues building permits is required to maintain a permanent record of the permit application and issuance thereon, which record shall indicate the name of the professional engineer or architect, if any, that has sealed the plans, specifications, plats, or reports pursuant to which said building permit is issued, said record to include details on the size, type of building or structure, use for said building or structure, and estimated cost of construction. (Ga. L. 1937, p. 294, § 19; Ga. L. 1945, p. 294, § 30; Ga. L. 1972, p. 222, § 11; Code 1933, § 84-2124, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1982, p. 2483, §§ 1, 2; Ga. L. 1994, p. 97, § 43.)

Cross references. — Provisions regarding approval of plans and specifications by registered architects, §§ 43-4-14, 43-4-15.

JUDICIAL DECISIONS

Relationship between engineering and architecture professions. — Statute is a tacit recognition of the inherent overlap between professions of engineering and architecture. Georgia Ass'n of Am. Inst. of Architects v. Gwinnett County, 238 Ga. 277, 233 S.E.2d 142 (1977) (see O.C.G.A. § 43-15-24).
Cited in Gadd v. Wilson & Co. Eng'rs, 193 Ga. App. 713, 388 S.E.2d 875 (1989).

OPINIONS OF THE ATTORNEY GENERAL

Seal of registered architect or engineer. — Public officials charged with the responsibility of issuing building permits and enforcing building codes must require that all plans and specifications bear the seal of a registered professional engineer or architect prior to the issuance of a building permit for construction of any structure, including alterations, of which the completed cost is more than \$100,000.00, unless the structure is used exclusively for private or noncommercial purposes, is a private residence, is a non-commercial farm building for use by the farmer, is a residential building not exceeding two stories in height (excluding basements), or is a domestic out-building appurtenant to a one or two-family residence. 1987 Op. Att'y Gen. No. 87-31.
 Schools, auditoriums, or other buildings intended for the mass assemblage of people or group housing projects are not exempt from the requirement of having the seal of a registered architect or professional engineer present on plans and drawings, regardless of the completed cost of construction. 1987 Op. Att'y Gen. No. 87-31.

43-15-25. Procedure for filing charges against certificate holder.

(a) Any person may prefer charges of fraud, deceit, gross negligence, incompetency, or unprofessional conduct against any person holding a certificate or certificate of registration. Such charges shall be in writing, shall be sworn to by the person making them, and shall be filed with the board.

(b) All such charges, unless dismissed by the board as unfounded or trivial, shall be acted upon by the board. (Ga. L. 1937, p. 294, § 22; Ga. L. 1945, p. 294, § 35; Code 1933, § 84-2127, enacted by Ga. L. 1975, p. 1048, § 1.)

RESEARCH REFERENCES

ALR. — Architect's liability for personal injury or death allegedly caused by improper or defective plans or design, 97 ALR3d 455.

43-15-26. Cease and desist orders; civil penalties for violation of order.

- (a) After notice and hearing, the board may issue an order prohibiting any person from violating Code Section 43-15-7 and may fine such person at least \$100.00 but not more than \$5,000.00 per violation.
- (b) The violation of any order of the board issued under subsection (a) of this Code section shall subject the person violating the order to an additional civil penalty not in excess of \$100.00 for each transaction constituting a violation of such order. The board may maintain an action in the superior courts of this state in its own name to recover the penalties provided for in this Code section. (Code 1933, § 84-2107, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1997, p. 527, § 1; Ga. L. 1999, p. 81, § 43.)

43-15-27. Enforcement of chapter.

- (a) It shall be the duty of all duly constituted law enforcement officers of this state and of the political subdivisions of this state to enforce this chapter and to prosecute any person violating this chapter.
- (b) The Attorney General or his designated assistant shall act as legal adviser to the board and render such legal assistance as may be necessary in carrying out this chapter.
- (c) Except as provided in Code Section 25-2-14, it shall be the duty of all public officials charged with the responsibility of enforcing codes related to construction to require compliance with Code Section 43-15-24 before engineering plans, drawings, and specifications are approved by construction. Except as provided in Code Section 25-2-14, no construction which is subject to Code Section 43-15-24 and which requires the service of an engineer shall be built without such approval prior to construction. (Ga. L. 1937, p. 294, § 23; Ga. L. 1945, p. 294, § 37; Code 1933, § 84-2129, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1982, p. 2271, § 1.)

Administrative rules and regulations. — Compliance and enforcement, Official Compilation of the Rules and Regulations of the State of Georgia, State	Board of Registration for Professional Engineers and Land Surveyors, Chapter 180-10.
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43-15-28. Applicability of the “Georgia Administrative Procedure Act.”

The board shall exercise the powers and duties conferred upon it in accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” (Code 1933, § 84-2130, enacted by Ga. L. 1975, p. 1048, § 1.)

43-15-29. Exceptions to operation of chapter.

(a) Nothing in this chapter shall be construed as excluding a qualified architect registered in this state from such engineering practice as may be incident to the practice of his profession or as excluding a professional engineer from such architectural practice as may be incident to the practice of professional engineering.

(b) The following persons shall be exempt from this chapter:

(1) A person working as an employee or a subordinate of a person holding a certificate of registration under this chapter or an employee of a person practicing lawfully under Code Section 43-15-21, provided such work does not include final design decisions and is done under the supervision of, and responsibility therefor is assumed by, a person holding a certificate of registration under this chapter or a person practicing lawfully under Code Section 43-15-21;

(2) Officers and employees of the government of the United States while engaged within this state in the practice of professional engineering or land surveying for such government;

(3) All elective officers of the political subdivisions of the state while in the practice of professional engineering or land surveying in the performance of their official duties; and

(4) Officers and employees of the Department of Transportation, except as required by Title 46, while engaged within this state in the practice of professional engineering or land surveying for such department.

(c) This chapter shall not be construed as requiring registration for the purpose of practicing professional engineering or land surveying by an individual, firm, or corporation on property owned or leased by such individual, firm, or corporation unless the same involves the public safety or public health or for the performance of engineering which relates solely to the design or fabrication of manufactured products.

(d) This chapter shall not be construed to prevent or affect the practice of professional engineering and land surveying with respect to utility facilities by any public utility subject to regulation by the Public Service Commission, the Federal Communications Commission, the Federal Power Commission, or like regulatory agencies, including its parents, affiliates, or subsidiaries; or by the officers and full-time permanent employees of any such public utility, including its parents, affiliates, or subsidiaries, except where such practice involves property lines of adjoining property owners, provided that this exception does not extend to any professional engineer or land surveyor engaged in the practice of professional engineering or land surveying whose compen-

sation is based in whole or in part on a fee or to any engineering services performed by the above-referenced utility companies not directly connected with work on their facilities.

(e) This chapter shall not be construed to affect the lawful practice of a person acting within the scope of a license granted by the state under any other law. (Ga. L. 1937, p. 294, § 20; Ga. L. 1945, p. 294, § 32; Ga. L. 1972, p. 222, § 12; Code 1933, § 84-2125, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1999, p. 81, § 43.)

JUDICIAL DECISIONS

County engineer may design firehouse. — Design and supervision of building of fire station by professional engineer employee of county did not constitute unlawful practice of architecture since building of fire station falls within legislative definitions of both professions and because the Code explicitly recognizes some overlap between the professions. *Georgia Ass'n of Am. Inst. of Architects v. Gwinnett County*, 238 Ga. 277, 233 S.E.2d 142 (1977).

Lawful for qualified architect to engage in engineering practices. — Although it is unlawful for anyone other than a professional engineer to practice professional engineering in Georgia, a qualified architect can engage in engineer-

ing practices when such practices are incident to the practice of architecture. *Tomberlin Assocs., Architects, Inc. v. Free*, 174 Ga. App. 167, 329 S.E.2d 296 (1985).

Employee engineers not taxable if not making final design decisions. — City cannot tax engineers and architects pursuant to former Code 1933, § 92-307 (see O.C.G.A. § 48-13-5) who, although the engineers and architects hold certificates, work as employees in firms in which principals responsible for final design decisions hold certificates. *City of Atlanta v. Georgia Soc'y of Professional Eng'rs*, 220 Ga. 62, 137 S.E.2d 41 (1964).

Cited in *Monumental Properties of Ga., Inc. v. Frontier Disposal, Inc.*, 159 Ga. App. 35, 282 S.E.2d 660 (1981).

OPINIONS OF THE ATTORNEY GENERAL

By use of word "solely" in subsection (c) of former Code 1933, § 84-2125, legislature's intention was to strictly construe the exemption; an ex-

emption contrary to the express intention of the statute should be given a narrow construction. 1980 Op. Att'y Gen. No. 80-69 (see O.C.G.A. § 43-15-29).

43-15-30. Unlawful acts.

(a) Any person who violates Code Section 43-15-7 shall be guilty of a misdemeanor.

(b) Any person presenting or attempting to use as his own the certificate of registration or the seal of another obtained under this chapter shall be guilty of a misdemeanor.

(c) Any person who gives any false or forged evidence of any kind to the board or to any member thereof in obtaining a certificate or certificate of registration shall be guilty of a misdemeanor.

(d) Any person who falsely impersonates any other registrant or any person who attempts to use an expired or revoked certificate of registration shall be guilty of a misdemeanor.

(e) Each day or occurrence shall be considered a separate offense.

(f) Any person offering services to the public who uses by name, verbal claim, sign, advertisement, directory listing, or letterhead the words "Engineer," "Engineers," "Professional Engineering," "Engineering," or "Engineered" shall be guilty of a misdemeanor unless said person has complied with the provisions of this chapter. (Ga. L. 1937, p. 294, § 23; Ga. L. 1945, p. 294, § 40; Code 1933, § 84-2131, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1982, p. 2271, § 2.)

RESEARCH REFERENCES

ALR. — Validity and application of statute prohibiting use of name descriptive of engineering by business organization not practicing profession of engineering, 13 ALR4th 676.

43-15-31. Termination.

Repealed by Ga. L. 1992, p. 3137, § 14, effective July 1, 1992.

Editor's notes. — This Code section was based on Ga. L. 1982, p. 2308, §§ 1, 2; Ga. L. 1983, p. 3, § 32; and Ga. L. 1988, p. 309, § 1.

CHAPTER 16

FIREARMS DEALERS

Sec.		Sec.	
43-16-1.	"Department" defined.	43-16-8.	Revocation of license for non-payment of fee.
43-16-2.	License requirement; applicability of chapter to casual sales.	43-16-9.	Reinstatement of license.
43-16-3.	Affidavit of applicant for license.	43-16-10.	Authority to revoke license for fraud, unethical practice, or crime.
43-16-4.	Surety bond [Repealed].	43-16-10.1.	Record-keeping requirements.
43-16-5.	License fees.	43-16-11.	Applicability of the "Georgia Administrative Procedure Act."
43-16-6.	Disposition of fees; expenses of administering chapter.	43-16-12.	Penalty.
43-16-7.	Display of license.		

Administrative rules and regulations. — Firearms dealers license, Official Compilation of the Rules and Regula-

tions of the State of Georgia, Department of Public Safety, Chapter 570-4.

OPINIONS OF THE ATTORNEY GENERAL

Compelling of compliance by department. — Department of Public Safety cannot compel compliance with the statutory provisions on firearms dealers

either by criminal or equitable proceedings since no such procedure is provided for. 1963-65 Op. Att'y Gen. p. 95.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614,

615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Validity of state gun control legislation under state constitutional provisions securing the right to bear arms, 86 ALR4th 931.

43-16-1. "Department" defined.

As used in this chapter, the term "department" means the Department of Public Safety.

RESEARCH REFERENCES

Am. Jur. 2d. — 79 Am. Jur. 2d., Weapons and Firearms § 4 et seq.

C.J.S. — 94 C.J.S., Weapons §§ 1, 2, 52 et seq.

43-16-2. License requirement; applicability of chapter to casual sales.

Any person, firm, retail dealer, wholesale dealer, pawnbroker, or corporation who shall sell, dispose of, or offer for sale or cause or permit to be sold, disposed of, or offered for sale any pistol, revolver, or short-barreled firearm of less than 15 inches in length, whether the same shall be his own property or whether he shall sell the same as an agent or employee of another, shall obtain from the department a license permitting the sale of such pistols, revolvers, and firearms. Nothing in this chapter shall apply to or prohibit the casual sales of the articles referred to in this Code section between individuals or bona fide gun collectors. (Ga. L. 1963, p. 652, § 1; Ga. L. 1964, p. 177, § 1.)

Cross references. — Offenses involving possession and use of firearms generally, § 16-11-100 et seq.

JUDICIAL DECISIONS

Operation of pawnshop by convicted felons. — It was not illegal for a convicted felon merely to operate a pawnshop, when the trade of firearms was only incidental to the operation of the pawnshop. Therefore, the partnership agreement with the convicted felon regarding

the operation of the pawnshop did not violate public policy. *Rackmyer v. Bradford*, 207 Ga. App. 667, 428 S.E.2d 674 (1993).

Cited in *Taylor v. State*, 249 Ga. App. 5389, 548 S.E.2d 662 (2001).

OPINIONS OF THE ATTORNEY GENERAL

Corporation must obtain license for each retail outlet selling firearms. — Intent of legislature was to require each establishment which sells these types of firearms to acquire a license and to keep the license conspicuously displayed on the premises of the establishment; therefore, a corporation must obtain a license for each retail outlet which

sells these firearms. 1963-65 Op. Att'y Gen. p. 764.

Casual sales are exempt. — Casual sale between two private persons who do not regularly follow and engage in such a pursuit as a means of livelihood would be exempt from application of this section. 1963-65 Op. Att'y Gen. p. 74 (see O.C.G.A. § 43-16-2).

RESEARCH REFERENCES

ALR. — Necessity of dealer's license to authorize sale of articles taken as security for or to satisfy a debt, 36 ALR 685.

Right to enjoin business competitor

from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

Handgun manufacturer's or seller's liability for injuries caused to another by use

of gun in committing crime, 44 ALR4th 595.

43-16-3. Affidavit of applicant for license.

Any person, firm, retail dealer, wholesale dealer, pawnbroker, or corporation who makes application for a license under this chapter must accompany such application with an affidavit of the applicant sworn to before an officer authorized by law to administer oaths, stating that the applicant is a citizen of the United States, has reached the age of 21 years, and has not been convicted of a felony. (Ga. L. 1963, p. 652, § 2.)

JUDICIAL DECISIONS

Operation of pawnshop by convicted felons. — It was not illegal for a convicted felon merely to operate a pawnshop, when the trade of firearms was only incidental to the operation of the pawnshop. Therefore, the partnership agree-

ment with the convicted felon regarding the operation of the pawnshop did not violate public policy. *Rackmyer v. Bradford*, 207 Ga. App. 667, 428 S.E.2d 674 (1993).

43-16-4. Surety bond.

Reserved. Repealed by Ga. L. 2010, p. 391, § 1/SB 162, effective May 24, 2010.

Editor's notes. — This Code section was based on Ga. L. 1963, p. 652, § 3.

43-16-5. License fees.

All annual license fees described by this chapter shall be paid to the department on or before July 1 of each year. The department shall issue its receipt for every payment. The annual license payment to acquire such license shall be \$25.00 for the owner of any establishment which sells any firearms listed in Code Section 43-16-2. The annual employee license fee shall be \$3.00. (Ga. L. 1963, p. 652, § 5.)

OPINIONS OF THE ATTORNEY GENERAL

Corporation must obtain license for each retail outlet selling firearms. — Intent of legislature was to require each establishment which sells these types of firearms to acquire a license and to keep the license conspicuously dis-

played on premises of establishment; therefore, a corporation must obtain a license for each retail outlet which sells these firearms. 1963-65 Op. Att'y Gen. p. 764.

43-16-6. Disposition of fees; expenses of administering chapter.

All fees derived under this chapter shall be paid into the general fund of the state treasury; and the funds necessary to pay the expense of administering this chapter shall be derived from appropriations made to the department. (Ga. L. 1963, p. 652, § 11.)

43-16-7. Display of license.

Every recipient of a license to sell any firearms listed in Code Section 43-16-2 shall keep such license conspicuously displayed on his business premises. (Ga. L. 1963, p. 652, § 4.)

OPINIONS OF THE ATTORNEY GENERAL**Corporation must obtain license for each retail outlet selling firearms.**

— Intent of legislature was to require each establishment which sells these types of firearms to acquire a license and to keep the license conspicuously dis-

played on premises of the establishment; therefore, a corporation must obtain a license for each retail outlet which sells these firearms. 1963-65 Op. Att'y Gen. p. 764.

43-16-8. Revocation of license for nonpayment of fee.

Should any licensee fail or neglect to pay his annual license fee on or before July 1 of every year, the department shall notify him that his license will be revoked. Unless the fee is paid in full before August 1 of the same year, the department shall revoke the license. (Ga. L. 1963, p. 652, § 6.)

43-16-9. Reinstatement of license.

The owner of any establishment or employee thereof whose license for selling such firearms has been revoked for failure to pay the annual license fee may make application to the department for reinstatement. Such application shall be accompanied by a fee of \$10.00, in addition to the regular license fee required. If the department shall find the applicant guilty only of default in payment of annual license fees, the license may be immediately reinstated. (Ga. L. 1963, p. 652, § 7; Ga. L. 1982, p. 3, § 43.)

43-16-10. Authority to revoke license for fraud, unethical practice, or crime.

The department shall have the power to revoke any license granted by it under this chapter to any person, firm, retail dealer, wholesale dealer, pawnbroker, or corporation, or any agent or employee thereof,

found by the Board of Public Safety to be guilty of fraud or willful misrepresentation, or found guilty under the laws of this state of any crime involving moral turpitude, or found guilty of violating Code Section 16-11-101. (Ga. L. 1963, p. 652, § 8.)

Cross references. — Dangerous instrumentalities and practices, § 16-11-110 et seq.

JUDICIAL DECISIONS

Cited in *Yarbrough v. State*, 119 Ga. App. 46, 166 S.E.2d 35 (1969).

43-16-10.1. Record-keeping requirements.

(a) As a condition of any license issued pursuant to this chapter, each licensee shall be required to keep a record of the acquisition and disposition of firearms as provided in this Code section.

(b) The record required by subsection (a) of this Code section shall be identical in form and context to the firearms acquisition and disposition record required by Part 178 of Chapter 1 of Title 27 of the Code of Federal Regulations as it exists on July 1, 1988.

(c) The record required by subsection (a) of this Code section shall be maintained on the licensed premises and shall be open to the inspection of any duly authorized law enforcement officer during the ordinary hours of business or at any reasonable time. The record of each acquisition or disposition of a firearm shall be maintained for a period of not less than five years.

(d) The failure of a licensee to keep and maintain the records required by this Code section shall be grounds for revocation of the license. (Code 1981, § 43-16-10.1, enacted by Ga. L. 1988, p. 690, § 1.)

43-16-11. Applicability of the “Georgia Administrative Procedure Act.”

All proceedings for the revocation of licenses issued under this chapter shall be governed by Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” (Ga. L. 1963, p. 652, § 9.)

43-16-12. Penalty.

Any person, firm, or corporation who violates this chapter shall be guilty of a misdemeanor. (Ga. L. 1964, p. 177, § 2.)

CHAPTER 17

CHARITABLE SOLICITATIONS

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| Sec. | | Sec. | |
| 43-17-1. | Short title. | 43-17-9. | Exemptions. |
| 43-17-2. | Definitions. | 43-17-10. | Administration of chapter. |
| 43-17-3. | Registration of paid solicitors; renewal; financial statements; denial of registration; amendments; contracts; solicitation notices; accounting; deposit of contributions; records. | 43-17-11. | Enforcement of chapter; investigations; subpoenas; cooperation with law enforcement and regulatory agencies. |
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| 43-17-5. | Registration of charitable organizations; service of process; financial statement; tax exemption determination; denial; renewal; amendments; fees; records. | 43-17-14. | Recovery of damages; class actions. |
| 43-17-6. | Agreement for charitable sales promotion; final accounting and records of promotions. | 43-17-15. | Venue. |
| 43-17-7. | Denial, suspension, or revocation of registration; other disciplinary actions; financial statements. | 43-17-16. | Hearings; notice; powers and orders of the Secretary of State. |
| 43-17-8. | Disclosures required. | 43-17-17. | Appeals. |
| 43-17-8.1. | Requirements for use of collection receptacles for donations. | 43-17-18. | Service of process. |
| | | 43-17-19. | Applicability of "Fair Business Practices Act of 1975." |
| | | 43-17-20. | Secretary of State immune from liability and suit. |
| | | 43-17-21. | Burden of proof on persons claiming exemption or exception; certified copies; certificate of compliance or noncompliance. |
| | | 43-17-22. | Provisions of chapter govern criminal or civil proceedings. |
| | | 43-17-23. | Violations of chapter. |

Cross references. — Criminal penalty for false statements by telephone solicitors, § 16-9-54.

Editor's notes. — Ga. L. 1988, p. 490, § 1, effective July 1, 1988, repealed the Code sections formerly codified at this chapter and enacted the current chapter. The former chapter consisted of Code Sections 43-17-1 through 43-17-14, 43-17-14.1, and 43-17-15 through

43-17-19 and was based on Ga. L. 1962, p. 496, Ga. L. 1963, p. 482, Ga. L. 1980, p. 335, Ga. L. 1981, Ex. Sess., p. 8, Ga. L. 1982, p. 922, Ga. L. 1986, p. 1465, Ga. L. 1987, p. 191, and Ga. L. 1987, p. 968.

Law reviews. — For survey article discussing developments in law of business associations for the period from June 1, 1999 through May 31, 2000, see 52 Mercer L. Rev. 95 (2000).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions

under prior law are included in the annotations for this chapter.

Legislature, in exempting educational institutions from the operation of these provisions, intended to exempt "schools" in the traditional sense of the word, that is, a grammar school, high school, college, or professional or

trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students. 1981 Op. Att'y Gen. No. 81-5 (decided under prior law).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Admin-

istrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Nonprofit charitable institutions as within operation of labor statutes, 26 ALR2d 1020.

Criminal offenses under statutes and ordinances regulating charitable solicitations, 76 ALR3d 924.

Enforceability of subscription under conditional charitable pledge, 97 ALR3d 1054.

Lack of consideration as barring enforcement of promise to make charitable contribution or subscription—modern cases, 86 ALR4th 241.

Validity, construction, and application of state statute or law pertaining to telephone solicitation, 44 ALR5th 619.

43-17-1. Short title.

This chapter shall be known and may be cited as the "Georgia Charitable Solicitations Act of 1988." (Code 1981, § 43-17-1, enacted by Ga. L. 1988, p. 490, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 15 Am. Jur. 2d., Charities, § 176 et seq. 60 Am. Jur. 2d., Peddlers, Solicitors, and Transient Dealers, § 76 et seq.

C.J.S. — 14 C.J.S., Charities, § 91 et seq.

43-17-2. Definitions.

As used in this chapter, the term:

(1) "Administrator" means the office created in subsection (a) of Code Section 10-1-395.

(2) "Charitable organization" means any benevolent, philanthropic, patriotic, or eleemosynary (of, relating to, or supported by

charity or alms) person, as that term is defined in this Code section, who solicits or obtains contributions solicited from the general public, any part of which contributions is used for charitable purposes; and any person who or which falsely represents himself, herself, or itself to be a charitable organization as defined by this paragraph. The term charitable organization shall not include a religious organization as defined in paragraph (12) of this Code section.

(3) "Charitable purpose" means any charitable, benevolent, philanthropic, patriotic, or eleemosynary purpose for religion, health, education, social welfare, arts and humanities, environment, civic, or public interest; and any purpose which is falsely represented to be a charitable purpose as defined by this paragraph.

(4) "Charitable sales promotion" means an advertising or sales campaign, conducted by a commercial coventurer, which represents that the purchase or use of goods or services offered by the commercial coventurer will benefit, in whole or in part, a charitable organization or purpose.

(4.1) "Collection receptacle" means an unattended container for the purpose of collecting donations of clothing, books, personal or household items, or other goods. Such term shall not include containers used for the purpose of collecting monetary donations.

(5) "Commercial coventurer" means a person who for profit is regularly and primarily engaged in trade or commerce other than in connection with soliciting for charitable organizations or purposes and who conducts a charitable sales promotion.

(6) "Contribution" means the promise or grant of any money or property of any kind or value.

(7) "Educational institution" means an entity organized and operated exclusively for educational purposes and which either:

(A) Maintains a regular faculty and curriculum and has a regularly enrolled body of students in attendance at the place where its educational activities are regularly carried on; or

(B) Is accredited by a nationally recognized, independent higher education accreditation body.

(8) "Executive officer" means the chief executive officer, the president, the principal financial officer, the principal operating officer, each vice president with responsibility involving policy-making functions for a significant aspect of a person's business, the secretary, the treasurer, or any other person performing similar functions with respect to any organization, whether incorporated or unincorporated.

(9) "Fundraising counsel" means any person, other than a paid solicitor required to register under this chapter, who plans, advises,

consults, or prepares material for a solicitation of charitable contributions within, into, or from this state and who does not either:

(A) Solicit such contributions or employ, procure, engage, direct, or supervise any compensated person to solicit such contributions; or

(B) Have custody or control of contributions.

A natural person who is a volunteer, employee, or salaried officer of a charitable organization is not a fundraising counsel with respect to the charitable organization of which he or she is a volunteer, individual, or officer. An attorney, accountant, investment counselor, or banker who, solely incidental to his or her profession, renders professional services to a charitable organization, paid solicitor, or fundraising counsel or advises a person to make a charitable contribution is not a fundraising counsel as a result of such advice.

(10) "General public" or "public," with respect to a charitable organization, means any person in the State of Georgia without a membership in or other bona fide relationship with such charitable organization.

(11) "Membership" or "member" means a status by which, for the payment of fees, dues, assessments, and other similar payments, an organization provides services to the payor and confers on the payor a bona fide right, privilege, professional standing, honor, or other direct benefit other than the right to vote, elect officers, or hold offices. The term "membership" or "member" shall not be construed to apply to a person on whom an organization confers a membership solely as a consideration for making a contribution.

(12)(A) "Paid solicitor" means a person:

(i) Other than a commercial coventurer who, for compensation, performs for a charitable organization any service in connection with which contributions are, or will be, solicited within or from this state by such person or by any compensated person he or she employs, procures, engages, or contracts with, directly or indirectly, to so solicit;

(ii) Who would be a fundraising counsel but for the fact that such person at any time has custody of contributions from a solicitation as defined by this chapter; or

(iii) Who services a collection receptacle which purports, either through language appearing on the receptacle itself or otherwise, to be collecting items for the purpose of benefiting a charitable purpose or one or more entities espousing a charitable purpose.

(B) A "paid solicitor" shall not mean:

(i) A bona fide officer, employee, or volunteer of a charitable organization or commercial coventurer with respect to contributions solicited for that charitable organization;

(ii) An attorney, investment counselor, accountant, or banker who, solely incidental to his or her profession, advises a person to make a charitable contribution or who holds funds subject to an escrow or trust agreement;

(iii) A person who removes or delivers donations placed in a collection receptacle for a fixed fee and who does not otherwise directly or indirectly receive any of the proceeds of the sale of such donations or derive any other benefit from such activity; or

(iv) A charitable organization registered with the Secretary of State which operates collection receptacles or a religious organization which operates collection receptacles.

(13) "Person" means an individual, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a trust, or any unincorporated organization.

(14) "Religious organization" means an entity which:

(A) Conducts regular worship services; or

(B) Is qualified as a religious organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as now or hereafter amended, that is not required to file IRS Form 990, Return of Organization Exempt From Income Tax, under any circumstances.

(15) "Solicitation," "solicitation of funds," or "solicit" means the request or acceptance directly or indirectly of money, credit, property, financial assistance, or any other thing of value to be used for any charitable purpose; and such act shall be a consumer act or practice or consumer transaction as defined by Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices Act of 1975."

(16) "Solicitor agent" means any person, other than a paid solicitor or commercial coventurer, who or which solicits charitable contributions for compensation. The term "solicitor agent" shall not include, with respect to a particular charitable organization which is either registered or exempt from registration under this chapter, any person who is a charitable organization itself or a bona fide officer, employee, or volunteer of such charitable organization which is either registered or exempt from registration under this chapter and who is neither supervised by, nor whose activities are directed by, any paid solicitor or its agent.

(17) "State" means any state, territory, or possession of the United States, the District of Columbia, Puerto Rico, and the Virgin Islands. (Code 1981, § 43-17-2, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 1993, p. 123, § 34; Ga. L. 1999, p. 81, § 43; Ga. L. 2000, p. 1657, § 1; Ga. L. 2008, p. 683, § 1/HB 1104; Ga. L. 2010, p. 559, §§ 1, 2/HB 863; Ga. L. 2011, p. 752, § 43/HB 142.)

The 2010 amendment, effective July 1, 2010, added paragraph (4.1) and rewrote paragraph (12).

13, 2011, part of an Act to revise, modernize, and correct the Code, revised language in division (12)(A)(iii).

The 2011 amendment, effective May

43-17-3. Registration of paid solicitors; renewal; financial statements; denial of registration; amendments; contracts; solicitation notices; accounting; deposit of contributions; records.

(a) No paid solicitor shall solicit contributions for a charitable purpose in or from this state or on behalf of a charitable organization, unless such paid solicitor is a registered paid solicitor pursuant to this Code section. No paid solicitor shall solicit contributions in person unless such paid solicitor has been qualified for such means of solicitation by the Secretary of State.

(b) A fundraising counsel who at any time has custody of contributions from a solicitation for a charitable purpose must be registered as a paid solicitor and comply with the provisions of this Code section.

(c)(1) A paid solicitor shall be registered with the Secretary of State prior to engaging in any solicitation. A registration shall expire on December 31 of the year in which the registration became effective and may be renewed for additional one-year periods upon application and the payment of the appropriate fee.

(2) An application for registration as a paid solicitor may be made by any person and shall be accompanied by the registration fee set forth in subsection (d) of this Code section. Such application for registration shall be made in a manner prescribed by the Secretary of State, which may include, in whole or in part, electronic filing, shall be verified by the applicant, shall be filed with the Secretary of State, and shall contain the information and documents set forth in this paragraph and such other information as may be prescribed by rules and regulations promulgated by the Secretary of State:

(A) The name of the applicant;

(B) The address of the principal place of business of the applicant and the addresses of all branch offices of the applicant in this state;

(C) The form of business organization; the date of organization of the applicant; and if the business entity is a corporation or limited partnership, the date it qualified to do business in Georgia;

(D) The names and business addresses of all general partners, limited partners, directors, affiliates, or executive officers of the applicant; if the applicant is a limited liability company, the names and business addresses of all members of the limited liability company; a statement of the limitations, if any, of the liability of any general partner, limited partner, director, member, affiliate, or executive officer; and a statement setting forth in chronological order the occupational activities of each such general partner, limited partner, director, member, affiliate, or executive officer during the preceding ten years;

(E) A brief description of the general character of the business conducted or proposed to be conducted by the applicant;

(F) A list of any other states in which the applicant is registered as a paid solicitor and, if registration of the applicant as a paid solicitor has ever been denied, revoked, suspended, or withdrawn or if such a proceeding is pending in any state, full details with respect thereto;

(G) Whether the applicant or any general partner, limited partner, director, member, affiliate, or executive officer of such applicant has ever been subject to any injunction or disciplinary proceeding by any state agency involving any aspect of fund raising or solicitation, has ever been convicted of or charged with a misdemeanor of which fraud is an essential element or which involved charitable fund raising, or has ever been convicted of or charged with a felony and, if so, all pertinent information with respect to such injunction, disciplinary proceeding, conviction, or charge;

(H) Whether the applicant or any general partner, limited partner, director, member, affiliate, or executive officer of such applicant has ever been subject to an order, consent order, or any other disciplinary or administrative proceeding pursuant to the unfair and deceptive acts and practices law of any state and, if so, all pertinent information with respect to such order or proceedings; and

(I) Written consent by each control person of the paid solicitor, as described by rule of the Secretary of State, to a criminal background investigation for the purpose of verification by the Secretary of State of information provided in the application.

(3) If the paid solicitor will have physical possession or legal control over any contributions collected by it in or from this state, the

applicant shall attach to the application for registration as a paid solicitor a financial statement for the fiscal year of the applicant which ended within one year prior to the date of filing unless the fiscal year of the applicant has ended within 90 days prior to the date of filing, in which case the financial statement may be dated as of the end of the fiscal year preceding such last fiscal year. Such financial statement shall be prepared in accordance with generally accepted accounting principles.

(4) Within 15 business days after an applicant has fully complied with this subsection, the Secretary of State shall examine each paid solicitor's registration application, solicitation notice, and contract to determine whether the applicable requirements of this chapter relating to the same are satisfied and shall register such applicant as a paid solicitor unless he or she shall find that there are grounds for denial as provided in Code Section 43-17-7. When the Secretary of State has registered an applicant as a paid solicitor, he or she shall immediately notify the applicant of such registration. In the event the Secretary of State has not notified the applicant of deficiencies or grounds for denial of the application within such period, the applicant may conduct himself or herself in a manner as if registered until and unless such applicant is so notified.

(5) If the Secretary of State finds that there are sufficient grounds to deny the registration of the applicant as provided in Code Section 43-17-7, he or she shall issue an order refusing to register the applicant. The order shall state specifically the grounds for its issuance. A copy of the order shall be mailed to the applicant at his or her business address and to any charitable organization who proposes to employ such applicant.

(6) Every registration under this Code section shall expire on December 31 of each year. The registration of a paid solicitor must be renewed each year by the submission of a renewal application containing the information required in an application for registration, except to the extent that the Secretary of State by rule does not require the resubmission of such information which has previously been included in an application or renewal application previously filed; by the payment of the proper registration fee; and, if it would be required in the event of an initial application, by the filing of a financial statement as of a date within one year prior to the date of filing unless the fiscal year of the applicant has ended within 90 days prior to the date of filing, in which case the financial statement may be dated as of the end of the preceding fiscal year. Such financial statements shall be prepared in accordance with generally accepted accounting principles.

(7) The registration of a paid solicitor shall be amended within 30 days to reflect a change of name, address, principals, state of

incorporation, or other changes which materially affect the business of the paid solicitor. Such amendments shall be filed in a manner which the Secretary of State may prescribe by rule or regulation.

(d) The fee for the initial registration of a paid solicitor shall be \$250.00. The fee to amend the registration shall be \$15.00. The annual renewal fee for a paid solicitor registration shall be \$100.00.

(e)(1) There shall be a contract between a paid solicitor and a charitable organization which shall be in writing, shall clearly state the respective obligations of the paid solicitor and the charitable organization, and shall state the amount of compensation that the paid solicitor will receive. Such compensation shall be stated as a fixed amount, as an amount to be derived from a formula, or as a percentage of the gross revenue derived from the solicitation campaign, subject to and in accordance with the provisions of paragraphs (2), (3), and (4) of this subsection.

(2) If the compensation of the paid solicitor is contingent upon the number of contributions or the amount of revenue received from the solicitation campaign, the stated amount shall be expressed as a fixed percentage of the gross revenue.

(3) If the compensation of the paid solicitor is not contingent upon the number of contributions or the amount of revenue received, the stated amount shall be a reasonable estimate, expressed as a percentage of the gross revenue, and the contract shall clearly disclose the assumptions upon which the estimate is based. The stated assumptions shall be based upon all the relevant facts known to the paid solicitor regarding the solicitation to be conducted as well as the past performance of solicitations conducted by the paid solicitor.

(4) The compensation description required by this subsection shall exclude any amount which the charitable organization is to pay as expenses of the solicitation campaign, including the cost of merchandise or services sold or events staged. The contract shall clearly describe who shall pay such expenses, how they will be paid, and whether such payment is contingent upon any event or fact, including, but not limited to, the amount of funds raised through the solicitation campaign. If any portion of the expenses are paid separately by the charitable organization apart from the other fees paid to the paid solicitor, the contract shall include a reasonable estimate of such expenses.

(f) Prior to the commencement of each solicitation campaign the paid solicitor shall file with the Secretary of State a completed "solicitation notice" on forms prescribed by the Secretary of State. The Secretary of State may provide that said filing be made, in whole or in part, through electronic means. The solicitation notice shall include a copy of the

contract described in subsection (e) of this Code section, the projected dates when soliciting will commence and terminate, the location and telephone number from which the solicitation will be conducted, the name and residence address of each person responsible for directing and supervising the conduct of the campaign, a statement as to whether the paid solicitor will at any time have custody of contributions, and a full and fair description of the charitable program for which the solicitation campaign is being carried out.

(g) Within 90 days after a solicitation campaign has been completed, and on the anniversary of the commencement of a solicitation campaign lasting more than one year, the paid solicitor shall account to the charitable organization with whom it has contracted and to the Secretary of State for all contributions collected and expenses paid. The accounting shall be in the form of a written report, submitted to the charitable organization and to the Secretary of State, shall be retained by the charitable organization for three years, and shall contain the following information:

(1) The total gross receipts;

(2) A description of how the gross receipts were distributed, including an itemized list of all expenses, commissions, and other costs of the fundraising campaign and the net amount paid to the charitable organization for its charitable purposes after payment of all fundraising expenses, commissions, and other costs;

(3) The signature of the charitable organization acknowledging its agreement with the accuracy of the report, or a statement from the paid solicitor stating the reasons why such signature has not been obtained within the prescribed period, including a summary of any communications from the charitable organization contesting the accuracy of the report;

(4) With respect to any contributions other than monetary donations and securities, including, but not limited to, boats, motor vehicles, clothing, shoes, books, appliances, and other household items received as a result of solicitations by a paid solicitor:

(A) The names and addresses of any persons to whom such contributions were delivered by the paid solicitor, by the charitable organization whose name was used in connection with the solicitation, or by their agents; provided, however, that this subparagraph shall not require the names and addresses of donees or retail purchasers of consumer products which are delivered to a charitable organization to be given away or sold at retail by the charitable organization with the proceeds of such sales being used to further the stated charitable purpose of the organization;

(B) The total consideration, if any, received by the paid solicitor, by the charitable organization, or by their agents from such persons for such contributions; and

(C) The manner in which such consideration was calculated; and

(5) Such other information as the Secretary of State by rule may require.

(h) Each monetary contribution received by the paid solicitor shall, in its entirety and within three business days of its receipt, be deposited in an account at a federally insured financial institution. The account shall be in the name of the charitable organization with whom the paid solicitor has contracted and the charitable organization shall have sole control of all withdrawals from the account.

(i)(1) The paid solicitor shall maintain during each solicitation campaign and for not less than three years after its completion, the following records:

(A) The name and, if known to the paid solicitor, the address of each person pledging to contribute together with the date and amount of the pledge;

(B) The name and residence address of each employee, agent, or other person, however styled, involved in the solicitation;

(C) A record of all contributions at any time in the custody of the paid solicitor;

(D) A record of all expenses incurred by the paid solicitor for which the charitable organization is liable for payment;

(E) The location and account number of all accounts in which the paid solicitor has deposited revenue from the solicitation campaign; and

(F) Such other records as may be prescribed by the Secretary of State by rule and regulation.

(2) If the paid solicitor sells tickets to an event and represents that tickets will be donated for use by another, the paid solicitor shall also maintain for the same period as specified in paragraph (1) of this subsection:

(A) The name and address of those contributors donating tickets and the number of tickets donated by each contributor; and

(B) The name and address of all organizations receiving donated tickets for use by others, including the number of tickets received by each organization.

(3) All records of such paid solicitor are subject to such reasonable periodic, special, or other examinations by representatives of the

Secretary of State, within or outside this state, as the Secretary of State deems necessary or appropriate in the public interest or for the protection of the public, provided that the Secretary of State shall not disclose this information except to the extent he or she reasonably deems necessary for investigative or law enforcement purposes.

(j) Not later than 90 days following the end of each solicitation campaign, the paid solicitor shall provide to the charitable organization, at no cost, a copy of all records described in subsection (i) of this Code section. In the event any such campaign exceeds six months in length, such records shall be provided, in addition, not less than 30 days following the end of each six-month period. (Code 1981, § 43-17-3, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 1993, p. 123, § 35; Ga. L. 1996, p. 1261, §§ 1, 2; Ga. L. 2000, p. 1657, § 2; Ga. L. 2005, p. 60, § 43/HB 95; Ga. L. 2008, p. 683, § 2/HB 1104; Ga. L. 2010, p. 559, § 3/HB 863.)

The 2010 amendment, effective July 1, 2010, deleted “and” from the end of paragraph (g)(3); added present paragraph (g)(4); and redesignated former paragraph (g)(4) as present paragraph (g)(5).

43-17-3.1. Registration as a solicitor agent; application; denial; renewal; amendments; fees.

(a) No solicitor agent shall solicit contributions on behalf of a charitable organization within or from this state, unless such solicitor agent is a registered solicitor agent pursuant to this Code section and is affiliated through employment or as an independent contractor pursuant to a written agreement with a paid solicitor or charitable organization which is either registered or exempt from registration. No solicitor agent shall solicit contributions in person unless such solicitor agent has been qualified for such means of solicitation by the Secretary of State.

(b)(1) A solicitor agent shall register with the Secretary of State prior to engaging in any solicitation. Each registration shall expire on December 31 of each year and may be renewed for additional one-year periods upon application and the payment of the fee.

(2) Applications for registration may be made by any person and shall be accompanied by the registration fee set forth in subsection (c) of this Code section. Such application for registration shall be made in a manner prescribed by the Secretary of State, which may include, in whole or in part, electronic filing, shall be verified by the applicant, shall be filed with the Secretary of State, and shall contain the information and documents set forth in this paragraph and such other information as may be prescribed by rules and regulations promulgated by the Secretary of State:

(A) The name of the applicant;

(B) The address of each place of business of the applicant;

(C) The name and address of the paid solicitor or charitable organization with which the solicitor agent will be affiliated by employment or as an independent contractor;

(D) If the solicitor agent is to be an independent contractor, a copy of the contract setting forth the terms and conditions thereof;

(E) A list of any other states in which the applicant is registered as a paid solicitor agent and, if any registration of the applicant under the charitable solicitation law of any state has ever been denied, revoked, suspended, or withdrawn or if such a proceeding is pending in any state, full details with respect thereto;

(F) Whether the applicant has ever been subject to any injunction or disciplinary proceeding by any state agency involving any aspect of fund raising or solicitation, has ever been convicted of or charged with a misdemeanor of which fraud is an essential element or which involved charitable fund raising, or has ever been convicted of or charged with a felony and, if so, all pertinent information with respect to such injunction, disciplinary proceeding, conviction, or charge;

(G) Whether the applicant has ever been subject to an order, consent order, or any other disciplinary or administrative proceeding pursuant to the unfair and deceptive acts and practices law of any state and, if so, all pertinent information with respect to such order or proceedings;

(H) Whether the applicant seeks to be qualified to contact contributors and potential contributors in person, as distinguished from mail, telephonic, or electronic contact; and

(I) With respect to applicants who seek to be qualified to contact contributors or potential contributors in person, written consent to a criminal background investigation for the purpose of verification by the Secretary of State of information provided in the application.

(3) Except as provided in paragraph (7) of this subsection, within 15 business days after an applicant has fully complied with this subsection, the Secretary of State shall register such applicant as a solicitor agent unless he or she shall find that there are grounds for denial as provided in Code Section 43-17-7. When the Secretary of State has registered an applicant, he or she shall immediately notify the applicant of such registration. In the event the Secretary of State has not notified the applicant of deficiencies or grounds for denial of the application within such period, the applicant may conduct itself in a manner as if registered until and unless it is so notified.

(4) If the Secretary of State finds that there are sufficient grounds to deny the registration of the applicant as provided in Code Section 43-17-7, he or she shall issue an order refusing to register the applicant. The order shall state specifically the grounds for its issuance. A copy of the order shall be mailed to the applicant at his or her business address and to any charitable organization or paid solicitor who proposes to employ such applicant.

(5) Every registration under this Code section shall expire on December 31 of each year. The registration of a solicitor agent must be renewed each year by the submission of a renewal application containing the information required in an application for registration, except to the extent that the Secretary of State by rule does not require the resubmission of such information which has previously been included in an application or renewal application previously filed, and by the payment of the proper registration fee.

(6) The registration of a solicitor agent shall be promptly amended to reflect a change of name or address or other changes in the information previously provided to the Secretary of State. Such amendments shall be filed in a manner which the Secretary of State may prescribe by rule or regulation.

(7) With respect to applicants for solicitor agent seeking to be qualified to solicit in person, the applicant shall not be qualified to so solicit until the Secretary of State affirmatively notifies the applicant that he or she has been so qualified.

(c) The fee for the initial registration of a solicitor agent shall be \$50.00. The fee to amend the registration shall be \$15.00. The annual renewal fee for a solicitor agent shall be \$50.00. (Code 1981, § 43-17-3.1, enacted by Ga. L. 2000, p. 1657, § 3; Ga. L. 2008, p. 683, § 3/HB 1104.)

Cross references. — Solicitation permits for charitable organizations, § 40-6-97.1.

43-17-4. Bonding requirements for registered paid solicitors; deposits in lieu of bond.

(a) An applicant for registration as a paid solicitor who will have physical possession or legal control over any contributions collected by it in or from this state on behalf of any charitable organizations shall file with the Secretary of State a bond satisfactory to the Secretary of State in the sum of \$10,000.00 payable to the State of Georgia for the use of all interested persons and conditioned upon the faithful compliance by the principal with any and all provisions of this chapter and any regulations and orders issued by the Secretary of State. Such an

applicant for renewal of registration as a paid solicitor shall also file such bond. Except as otherwise provided in subsection (b) of this Code section, the Secretary of State shall not register such an applicant or renew the registration of such an applicant until such bond is filed as provided in this subsection. Any such bond may be canceled by the principal or surety by giving notice to the Secretary of State, but such cancellation shall not affect any cause of action accruing thereon prior to cancellation and such cancellation shall result in automatic cancellation of the principal's registration until a new bond satisfactory to the Secretary of State is filed. Any action on such bond must be brought within two years after accrual of the cause of action. The amount prescribed in this subsection for the bond required of a paid solicitor shall be construed as being the aggregate liability recoverable against such bond, regardless of the number of claimants, and shall not be construed as individual liability.

(b) The requirement for filing of such bond by an applicant for registration or renewal of registration as a paid solicitor shall not be applicable if the applicant for registration or renewal of registration as a paid solicitor has deposited in trust with the Secretary of State:

(1) A certificate of deposit or letter of credit evidencing a deposit with a financial institution satisfactory to the Secretary of State in the amount of \$10,000.00 payable to the applicant and assigned to the Secretary of State;

(2) An irrevocable letter of credit addressed to the Secretary of State in the amount of \$10,000.00, issued by a bank which is a member of the Federal Reserve System and conditioned only upon the rendering of a judgment by a court of competent jurisdiction in which the applicant is found liable for damages under this chapter; or

(3) Obligations of the United States, an agency thereof, or the State of Georgia which mature in not more than two years and which have a market value as of the date of deposit of at least \$10,000.00.

(c) Such deposits shall be held for the benefit of all persons to whom the applicant is liable for damages under this chapter for a period of two years after such applicant's registration has expired or been revoked; provided, however, such deposits shall not be released at any time while there is pending against the applicant an action (including any direct appeal of such action or an appeal based on a petition for certiorari jurisdiction), of which the Secretary of State has notice, in a court of competent jurisdiction in which it is alleged that the applicant is liable for damages under this chapter. Such deposits shall not be released except upon application to and the written order of the Secretary of State. The Secretary of State shall have no liability for any such release of any deposit or part thereof made by him in good faith. The Secretary

of State may designate any regularly constituted state depository having trust powers domiciled in this state as a depository to receive and hold any such deposit. Any such deposit so held shall be at the expense of the applicant. Such depository shall give to the Secretary of State a proper trust and safekeeping receipt upon which the Secretary of State shall give an official receipt to the applicant. The State of Georgia shall be responsible for the safekeeping and return of all deposits made pursuant to this Code section. So long as the applicant complies with this chapter, the applicant may demand, receive, bring an action for, and recover the income from the securities deposited or may exchange and substitute for the letter of credit or securities deposited or a part thereof, with the approval of the Secretary of State, a letter of credit or securities of the kinds specified in subsection (b) of this Code section of equivalent or greater value. No judgment creditor or other claimant of the applicant shall levy upon any deposit held pursuant to this Code section or upon any part thereof, except as specified in this subsection. Whenever any person shall file an action in a court of competent jurisdiction in which it is alleged that the applicant is liable for damages under this chapter, such person, in order to secure his recovery, may give notice to the Secretary of State of such alleged liability and of the amount of damages claimed, after which notice the Secretary of State shall be bound to retain, subject to the order of the Superior Court of Fulton County, as provided in subsection (d) of this Code section, a sufficient amount of the deposit to pay the judgment in the action.

(d) In the event that the applicant prevails in such action and in the event that such deposits have been held by the Secretary of State for a period of at least two years after the applicant's registration has expired or been revoked, then such deposits shall be released to the applicant; provided, however, such deposits shall not be released at any time while there is pending against the applicant an action (including any direct appeal of such action or an appeal based on a petition for certiorari jurisdiction), of which the Secretary of State has notice, in a court of competent jurisdiction in which it is alleged that the applicant is liable for damages under this chapter. If a judgment is rendered in such action by which it is determined that the applicant is liable for damages under this chapter and the applicant has not paid the judgment within ten days of the date the judgment became final or if the applicant petitions the Supreme Court of the United States to take certiorari jurisdiction over such action and the applicant has not paid the judgment within ten days of the date the Supreme Court of the United States denies certiorari jurisdiction or within ten days of the date the Supreme Court of the United States affirms the judgment, then such person may petition the Superior Court of Fulton County for an order directing the Secretary of State to reduce such deposit or a portion thereof sufficient

to pay the judgment to cash or its equivalent and to pay such judgment to the extent the judgment may be satisfied with the proceeds of the deposit. If there shall remain any residue from the deposit and if at least two years have passed since the expiration or revocation of the applicant's registration, the Secretary of State shall pay such residue to the applicant, taking his receipt for the residue, which shall be filed and recorded with the other papers of the case, unless there is pending against the applicant an action (including any direct appeal of such action or an appeal based on a petition for certiorari jurisdiction), of which the Secretary of State has notice, in a court of competent jurisdiction in which it is alleged that the applicant is liable for damages under this chapter, in which case the Secretary of State shall hold or dispose of such residue in accordance with the provisions of this subsection relating to the holding or disposing of the entire deposit. If more than one final judgment is rendered against the applicant for violation of this chapter, the judgment creditors shall be paid in full from such deposit or residue thereof, to the extent the deposit or residue is sufficient to pay the judgments, in the order in which the judgment creditors petitioned the Superior Court of Fulton County.

(e) Anything in this Code section to the contrary notwithstanding, the Secretary of State shall comply with any order of a Georgia or United States court of competent jurisdiction to turn over any deposit held by him pursuant to subsection (a) of this Code section or the proceeds from any bond held by him pursuant to subsection (a) of this Code section to a trustee or receiver for the use and sole benefit of persons on whose behalf the Secretary of State holds such deposit or proceeds. (Code 1981, § 43-17-4, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 2000, p. 1657, § 4.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, the word “judgment” was substituted for “judgment” near the beginning of the second sentence of subsection (d).

43-17-5. Registration of charitable organizations; service of process; financial statement; tax exemption determination; denial; renewal; amendments; fees; records.

(a) It shall be unlawful for any person:

(1) Wherever located to solicit or accept charitable contributions from any person located in this state;

(2) While in this state to solicit or accept charitable contributions from any person, wherever located; or

(3) Wherever located to solicit or accept charitable contributions from any person, wherever located, on behalf of a charitable organization located in this state,

unless the charitable organization on whose behalf such contributions are being solicited or accepted is subject to an effective registration statement under this chapter or exempt from registration pursuant to Code Section 43-17-9.

(b)(1) Every charitable organization, except those exempt from registration pursuant to Code Section 43-17-9, which intends to solicit in this state or have contributions solicited in this state on its behalf by other charitable organizations, commercial coventurers, or paid solicitors shall, prior to any solicitation, file a registration statement with the Secretary of State upon a form prescribed by the Secretary of State. No charitable organization required to be registered under this Code section shall solicit prior to registration.

(2) A registration statement, which the Secretary of State may require to be in whole or in part an electronic filing, shall be signed by an authorized executive officer of the charitable organization and shall contain the following information:

(A) The name under which the charitable organization intends to solicit contributions;

(B) The names and addresses of officers, directors, trustees, and executive personnel and, in the case of a state-wide parent organization, the communities in which the chapters, branches, or affiliates are located and their directors;

(C) The names and addresses of any fundraising counsel or paid solicitor who acts or will act on behalf of the charitable organization, together with a statement setting forth the terms of the arrangements for salaries, bonuses, commissions, or other remuneration to be paid to the fundraising counsel or paid solicitor;

(D) The general purposes for which the charitable organization is organized;

(E) The purposes for which the contributions to be solicited will be used;

(F) The period of time during which the solicitation will be made;

(G) The method of solicitation; and

(H) Such other information as the Secretary of State may require.

(3) There shall be filed with such application an irrevocable written consent of the applicant to the service of process upon the Secretary of State in actions against such applicant in the manner and form provided in Code Section 43-17-18.

(4) There shall be filed with such application a financial statement of the charitable organization or a consolidated financial statement of the charitable organization and its subsidiaries as of a date within one year prior to the filing of the registration statement. If the charitable organization has received or collected more than \$1 million during its preceding fiscal year, the financial statement shall be prepared by an independent certified public accountant and shall be a certified financial statement of the charitable organization or a certified consolidated financial statement of the charitable organization and its subsidiaries prepared in accordance with generally accepted accounting principles as of a date within one year prior to the date of filing unless the last fiscal year of the charitable organization has ended within 90 days prior to the date of filing, in which case such certified financial statement may be as of the end of the fiscal year preceding such last fiscal year. If the charitable organization has received or collected more than \$500,000.00 but not more than \$1 million during its preceding fiscal year, the financial statement shall be reviewed by an independent certified public accountant and such certified public accountant's review report, prepared in accordance with generally accepted accounting principles as of a date within one year prior to the date of filing, shall be filed with the financial statement. If the charitable organization has received or collected any charitable contributions during its preceding fiscal year, the financial statement shall have attached thereto a copy of the Form 990, Return of Organization Exempt From Income Tax, or the Form 990EZ, Short Form Return of Organization Exempt From Income Tax, which the organization filed for the previous taxable year pursuant to the United States Internal Revenue Code. In the event a charitable organization did not file a Form 990 or 990EZ, such charitable organization shall be required to file, with such financial statement, such form as may be prescribed by rule and regulation of the Secretary of State which requires information substantially similar to that required to be provided on Form 990 or 990EZ.

(5) Every charitable organization registered with the Secretary of State shall file with the Secretary of State copies of any federal or state tax exemption determination letters received after the initial registration within 30 days after receipt and shall file any amendments to its organizational instrument within 30 days after adoption.

(6) The Secretary of State may waive or extend the time period for the furnishing of any information required by this subsection and may require such additional information as to the previous history, records, or association of the applicant, general partners, limited partners, directors, affiliates, or executive officers or members in the case of a limited liability company as he or she may deem necessary to establish whether or not the applicant should be registered as a charitable organization under this chapter.

(7) When an applicant has fully complied with this subsection, the Secretary of State shall register such applicant as a charitable organization unless he or she shall find that there are grounds for denial as provided in Code Section 43-17-7. When the Secretary of State has registered an applicant as a charitable organization, he or she shall immediately notify the applicant of such registration.

(8) If the Secretary of State finds that there are sufficient grounds to deny the registration of the applicant as provided in Code Section 43-17-7, he or she shall issue an order refusing to register the applicant. The order shall state specifically the grounds for its issuance. A copy of the order shall be mailed to the applicant at its business address and to any paid solicitor who proposes to solicit contributions on behalf of the charitable organization.

(9) Every registration under this Code section shall be valid for a period of 24 months from its date of effectiveness. The registration must be renewed on or before the expiration date by the submission of a renewal application containing the information required in an application for registration, to the extent that such information has not previously been included in an application or renewal application previously filed, by the payment of the proper fee, and by the filing of financial statements covering the periods since the most recent financial statement previously filed. If the charitable organization has received or collected more than \$1 million during either of its two preceding fiscal years, the financial statements for the years with such revenue level shall be prepared by an independent certified public accountant and shall be a certified financial statement of the charitable organization or a certified consolidated financial statement of the charitable organization and its subsidiaries. If the charitable organization has received or collected more than \$500,000.00 but not more than \$1 million during either of its two preceding fiscal years, the financial statements for the years with such revenue level shall be reviewed by an independent certified public accountant and such certified public accountant's review report, prepared in accordance with generally accepted accounting principles. If the charitable organization has received or collected any charitable contributions during its preceding two fiscal years, the financial statements shall have attached thereto a copy of the Form 990, Return of Organization Exempt From Income Tax, or the Form 990EZ, Short Form Return of Organization Exempt From Income Tax, which the organization filed for the previous two taxable years pursuant to the United States Internal Revenue Code. In the event a charitable organization did not file a Form 990 or 990EZ, such charitable organization shall be required to file, with such financial statement, such form as may be prescribed by rule and regulation of the Secretary of State which requires information substantially

similar to that required to be provided on Form 990 or 990EZ. Such financial statements shall be prepared in accordance with generally accepted accounting principles and, if required to be certified, shall be certified by an independent public accountant duly registered and in good standing as such under the laws of the place of his or her residence or principal office.

(10) The registration of a charitable organization shall be amended within 30 days to reflect a change of name, address, principals, state of incorporation, corporate forms (including a merger of two charitable organizations), or other changes which materially affect the business of the charitable organization. Such amendments shall be filed in a manner which the Secretary of State may prescribe by rule or regulation.

(c) The fee for the initial registration of a charitable organization shall be \$35.00. The fee for renewal of a charitable organization's registration shall be \$20.00.

(d) A charitable organization shall maintain for not less than three years a record of all contributions including, but not limited to, the name and address of each contributor giving \$25.00 or more directly or indirectly to the charitable organization, the date and amount of the contribution, and the location and account number of all bank or other financial institution accounts in which the charitable organization has deposited contributions.

(e) All records of charitable organizations which relate to charitable solicitations or charitable contributions are subject to such reasonable periodic, special, or other examinations by representatives of the Secretary of State, within or outside this state, as the Secretary of State deems necessary or appropriate in the public interest or for the protection of the public, provided that the Secretary of State shall not disclose this information except to the extent he or she deems reasonably necessary for investigative or law enforcement purposes.

(f) A charitable organization shall maintain for not less than three years at an office located in Georgia or, if it has no office in Georgia, its principal office all records provided to it by any paid solicitor relating to any solicitation campaign. The charitable organization shall notify the Secretary of State of the address of the office at which such records are kept. (Code 1981, § 43-17-5, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 1991, p. 789, § 1; Ga. L. 1993, p. 123, § 36; Ga. L. 1998, p. 543, § 1; Ga. L. 2000, p. 1657, §§ 5, 6; Ga. L. 2008, p. 683, § 4/HB 1104.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, "principles" was substituted for "principals" in the third sentence of paragraph (4) and in the fourth sentence of paragraph (9) in subsection (b).

Pursuant to Code Section 28-9-5, in 2008, "he" was deleted following "or she" in the second sentence of paragraph (b)(7).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of statutory provisions, opinions decided under Ga. L. 1962, p. 496, § 3 are included in the annotations for this Code section.

Nursing home operated by religious corporation need not register. — Religious corporation which operates two nursing homes being managed and directed entirely by a member of the Primitive Baptist Church is not required to register with the Secretary of State. 1962

Op. Att'y Gen. p. 41 (decided under Ga. L. 1962, p. 496, § 3).

Local or branch community fund organizations not required to register. — County united community fund organization is not required to register if it is part of a state-wide parent organization which has registered or if solicitation of contributions is confined to the county. 1962 Op. Att'y Gen. p. 387 (decided under Ga. L. 1962, p. 496, § 3).

43-17-6. Agreement for charitable sales promotion; final accounting and records of promotions.

(a) Every charitable organization which agrees to permit a charitable sales promotion to be conducted in its behalf shall obtain, prior to the commencement of the charitable sales promotion within this state, a written agreement from the commercial coventurer which shall be available to the Secretary of State upon request. The agreement shall be signed by an authorized representative of the charitable organization and the commercial coventurer and it shall include, at a minimum, the following:

- (1) The goods or services to be offered to the public;
- (2) The geographic area where, and the starting and final date when, the offering will be made;
- (3) The manner in which the charitable organization's name will be used, including the representation to be made to the public as to the actual or estimated dollar amount or percent per unit of goods or services purchased or used that will benefit the charitable organization;
- (4) If applicable, the maximum dollar amount that will benefit the charitable organization;
- (5) The estimated number of units of goods or services to be sold or used;
- (6) A provision for a final accounting on a per unit basis to be given by the commercial coventurer to the charitable organization and the date by which it will be made;

(7) A statement that the charitable sales promotion is subject to the requirements of this chapter; and

(8) The date by when, and the manner in which, the benefit will be conferred on the charitable organization.

(b) The final accounting for the charitable sales promotion shall be kept by the commercial coventurer for three years after the final accounting date.

(c) All records of charitable organizations and commercial coventurers pertaining to such sales promotion are subject to such reasonable periodic, special, or other examinations by representatives of the Secretary of State, within or outside this state, as the Secretary of State deems necessary or appropriate in the public interest or for the protection of the public, provided that the Secretary of State shall not disclose this information except to the extent necessary for investigative or law enforcement purposes. (Code 1981, § 43-17-6, enacted by Ga. L. 1988, p. 490, § 1.)

Editor's notes. — Ga. L. 1987, p. 968, § 4, repealed a former Code Section 43-17-6 and enacted former Code Section 43-17-6. The pre-1987 Code section, con-

cerning registration of professional solicitors, was based on Ga. L. 1962, p. 496, § 7; Ga. L. 1980, ch. 335, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code Section 43-17-4 are included in the annotations for this Code section.

Independent member agencies of a centralized charitable fund-raising organization are not "affiliates" within the meaning of former O.C.G.A. § 43-17-4 and are therefore required to file separate reports with the Secretary of State verified by an independent certified public accountant. 1983 Op. Att'y Gen. No. 83-57 (decided under former § 43-17-4).

Reports may be performed by accountants employed by central agencies. — Verified reports for member agencies of a centralized fund-raising organization may be performed by independent certified public accountants employed by the central fund-raising organization as long as the audit and the auditor comply with principles normally accepted by the public accounting profession. 1983 Op. Att'y Gen. No. 83-57 (decided under former § 43-17-4).

43-17-7. Denial, suspension, or revocation of registration; other disciplinary actions; financial statements.

(a) The Secretary of State, by order, may deny, suspend, or revoke a registration, limit the fundraising activities that an applicant or registered person may perform in this state, bar an applicant or registered person from association with a paid solicitor or charitable organization, or bar a person who is a partner, officer, director, or employee of, or a member of a limited liability company which is, an

applicant or registered person from employment with a paid solicitor or charitable organization if the Secretary of State finds that the order is in the public interest and that the applicant, registered person, or such other person:

(1) Has filed an application for registration with the Secretary of State which, as of its effective date or any date after filing in the case of an order denying effectiveness, was incomplete in a material respect or contained a statement that was, in light of the circumstances under which it was made, false or misleading with respect to a material fact;

(2) Has willfully violated or failed to comply with this chapter, a prior enactment, or a rule promulgated by the Secretary of State under this chapter or a prior enactment;

(3) Is the subject of an adjudication or determination, after notice and opportunity for hearing, within the last five years by a state or federal agency or a court of competent jurisdiction that the person has violated the charitable organizations regulatory act or the unfair and deceptive acts and practices law of any state, but only if the acts constituting the violation of that state's law would constitute a violation of this chapter had the acts occurred in this state;

(4) Within the last ten years has been convicted of a felony or misdemeanor which the Secretary of State finds:

(A) Involves the solicitation or acceptance of charitable contributions or the making of a false oath, the making of a false report, bribery, perjury, burglary, or conspiracy to commit any of the foregoing offenses;

(B) Arises out of the conduct of solicitation of contributions for a charitable organization;

(C) Involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds;

(D) Involves murder or rape; or

(E) Involves assault or battery if such person proposes to be engaged in counseling, advising, housing, or sheltering individuals;

(5) Is permanently or temporarily enjoined by a court of competent jurisdiction from acting as a charitable organization, paid solicitor, or as an affiliated person or employee of such;

(6) Is the subject of an order of the Secretary of State denying, suspending, or revoking the person's registration as a charitable organization or paid solicitor;

(7) Has violated a law or any rule or regulation of this state, any other state, the United States, or any other lawful authority (without regard to whether the violation is criminally punishable), which law or rule or regulation relates to or in part regulates charitable organizations or paid solicitors regulated under this chapter, when the charitable organization or paid solicitor knows or should know that such action is in violation of such law, rule, or regulation;

(8) Has failed to pay the proper filing fee within 30 days after being notified by the Secretary of State of a deficiency, but the Secretary of State may provide for the reinstatement of the registration or the suspension of a fine or penalty at such time as the deficiency is corrected; or

(9) Has failed to comply with a subpoena or order issued by the Secretary of State.

(b) The Secretary of State may not begin a proceeding solely on the basis of a fact or transaction known to the Secretary of State when the registration became effective unless the proceeding is begun within 90 days after effectiveness of the registration.

(c) If the Secretary of State finds that an applicant or registered person is no longer in existence; has ceased to do business as a paid solicitor or charitable organization; is adjudicated mentally incompetent or subjected to the control of a committee, conservator, or guardian; or cannot be located after reasonable search, the Secretary of State, by order, may deny the application or revoke the registration.

(d) The Secretary of State may at any time require a charitable organization or paid solicitor to file with him a financial statement showing its financial condition as of the most recent practicable date, but such financial statement need not be certified. (Code 1981, § 43-17-7, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 1993, p. 123, § 37; Ga. L. 2000, p. 1657, § 7; Ga. L. 2008, p. 683, § 5/HB 1104.)

Editor's notes. — Former Code Section 43-17-7, which related to charitable expenditures, and which was based on Ga. L. 1980, p. 335, § 1, was repealed by Ga. L. 1987, p. 968, § 5.

43-17-8. Disclosures required.

(a) Every charitable organization, paid solicitor, or solicitor agent required to be registered under this Code section, at the time of any solicitation that occurs in or from this state, shall include the following disclosures:

(1) The name and location of the paid solicitor and solicitor agent, if any;

(2) The name and location of the charitable organization for which the solicitation is being made;

(3) That the following information will be sent upon request:

(A) A full and fair description of the charitable program for which the solicitation campaign is being carried out and, if different, a full and fair description of the programs and activities of the charitable organization on whose behalf the solicitation is being carried out; and

(B) A financial statement or summary which shall be consistent with the financial statement required to be filed with the Secretary of State pursuant to Code Section 43-17-5; and

(4) If made by a solicitor agent or paid solicitor, that the solicitation is being made by a paid solicitor on behalf of the charitable organization and not by a volunteer and inform the person being solicited that the contract disclosing the financial arrangements between the paid solicitor and the charity is on file with and available from the Secretary of State.

(b) This Code section shall not apply to charitable solicitations subject to and in compliance with the provisions of Code Section 43-17-8.1. (Code 1981, § 43-17-8, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 2000, p. 1657, § 8; Ga. L. 2008, p. 683, § 6/HB 1104; Ga. L. 2010, p. 559, § 4/HB 863.)

The 2010 amendment, effective July 1, 2010, designated the previously existing provisions as subsection (a) and added subsection (b).

43-17-8.1. Requirements for use of collection receptacles for donations.

(a) When any person makes a solicitation to the public by encouraging donations into a collection receptacle, the provisions of this Code section shall apply to such solicitations.

(b) If the collection receptacle is owned or operated entirely by a charitable organization exempt from taxation pursuant to Section 501(c)(3) of the United States Internal Revenue Code of 1986 or by a religious organization, the receptacle shall contain the following information in boldface letters at least two inches high on the front of the collection receptacle and directly underneath the deposit door stating:

(1) The name, address, website, if any, and telephone number of the charitable organization or religious organization that owns or operates the collection receptacle, from which persons may obtain additional information about the religious or charitable organization, including the address of its principal office and its telephone number; and

(2) Whether or not the charitable organization or religious organization is registered with the Secretary of State and, if it is registered, a statement that additional information may be obtained from the Secretary of State, including the charitable or religious purpose for which the charitable organization or religious organization exists.

(c) If the collection receptacle is owned or operated entirely or in part by any entity other than a charitable organization exempt from taxation pursuant to Section 501(c)(3) of the United States Internal Revenue Code of 1986 or by a religious organization, then the following shall apply:

(1) In the case where any of the items collected are to be sold and none of the proceeds of such sale are to be paid over or otherwise given to a charitable organization exempt from taxation pursuant to Section 501(c)(3) of the United States Internal Revenue Code of 1986 or to a religious organization, it shall be unlawful for any person to collect donations of goods or tangible items in such collection receptacle unless the collection receptacle displays the following statement: "DONATIONS ARE NOT FOR THE BENEFIT OF ANY CHARITABLE OR RELIGIOUS ORGANIZATION." The name, address, website, if any, and telephone number of the operator of the collection receptacle shall also be provided; and

(2) In the case where any of the items collected are to be sold and some or all of the proceeds from such sale are to be paid over or otherwise given to one or more charitable organizations exempt from taxation pursuant to Section 501(c)(3) of the United States Internal Revenue Code of 1986 or to a religious organization, it shall be unlawful for any person to collect donations of goods or tangible items in a collection receptacle unless the collection receptacle displays the following statement: "THIS COLLECTION BOX IS OPERATED BY [NAME OF OPERATOR]. THE ITEMS DEPOSITED IN THIS BOX WILL BE SOLD, AND A PORTION OF THE PROCEEDS WILL BE PAID TO [NAME OF CHARITABLE ORGANIZATION OR RELIGIOUS ORGANIZATION]. FURTHER INFORMATION ABOUT THESE PAYMENTS CAN BE OBTAINED FROM [NAME OF OPERATOR] AT [ADDRESS, WEBSITE, IF ANY, AND TELEPHONE NUMBER OF THE OPERATOR] AND [ADDRESS, WEBSITE, IF ANY, AND TELEPHONE NUMBER OF THE CHARITABLE ORGANIZATION OR RELIGIOUS ORGANIZATION]. IN ADDITION, FURTHER INFORMATION ABOUT THE CHARITABLE ORGANIZATION MAY BE OBTAINED FROM THE SECRETARY OF STATE."

The statements and all information required by paragraphs (1) and (2) of this subsection shall be prominently displayed in boldface letters at least two inches high located on the front of the collection receptacle and directly underneath the deposit door.

(d) The Secretary of State may by rule specify additional contact information required to be disclosed pursuant to subsections (b) and (c) of this Code section. (Code 1981, § 43-17-8.1, enacted by Ga. L. 2010, p. 559, § 5/HB 863.)

Effective date. — This Code section became effective July 1, 2010.

43-17-9. Exemptions.

(a) The following persons are exempt from the provisions of Code Sections 43-17-5, 43-17-6, and 43-17-8:

(1) Educational institutions and those organizations, foundations, associations, corporations, charities, and agencies operated, supervised, or controlled by or in connection with a nonprofit educational institution, provided that any such institution or organization is qualified under Section 501(c) of the Internal Revenue Code of 1986, as amended;

(2) Business, professional, and trade associations and federations which do not solicit members or funds from the general public;

(3) Fraternal, civic, benevolent, patriotic, and social organizations, when solicitation of contributions is carried on by persons without any form of compensation and which solicitation is confined to their membership;

(4) Persons requesting any contributions for the relief of any other individual who is specified by name at the time of the solicitation if all of the contributions collected, without any deductions whatsoever, are turned over to the named beneficiary; provided, however, that any such person who collects contributions in excess of \$5,000.00 in order to claim benefit of this exemption shall file with the Secretary of State a written accounting of funds so collected on forms prescribed by the Secretary of State at the end of the first 90 days of solicitation and, thereafter, at the end of every subsequent 90 day period until said solicitation is concluded;

(5) Any charitable organization which does not have any agreement with a paid solicitor and whose total revenue from contributions has been less than \$25,000.00 for both the immediately preceding and current calendar years;

(6) Any local or state-wide organization of hunters, fishermen, and target shooters which has been recognized as an organization described in Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code, as amended, or the corresponding provisions of any future federal revenue law;

(7) Any volunteer fire department or rescue service operating in conjunction with a city or county government in this state and which has received less than \$25,000.00 in both the immediately preceding and current calendar years;

(8) Religious organizations; or

(9) Political parties, candidates for federal or state office, and political action committees required to file financial information with federal or state elections commissions.

(b) Local community and state-wide organizations affiliated with or acting on behalf of a registered or exempt state-wide or national parent organization by contract or agreement need not register separately with the Secretary of State; provided, however, that all records of such organizations which relate to charitable solicitations or charitable contributions shall be subject to such reasonable periodic, special, or other examinations by the Secretary of State, within or outside this state, as the Secretary of State deems necessary or appropriate for the protection of the public. The single registration of the state-wide or national parent organization shall be considered all inclusive of all of its chapters, branches, or affiliates and individuals, which will be identified by listing the communities in which they are located and their directors, as provided in Code Section 43-17-5.

(c) National charitable organizations having a Georgia affiliate registered under this chapter need not register separately with the Secretary of State; provided, however, that all records of such national organizations which relate to charitable solicitations or charitable contributions shall be subject to such reasonable periodic, special, or other examinations by the Secretary of State, within or outside this state, as the Secretary of State deems necessary or appropriate for the protection of the public. The Secretary of State shall not disclose this information except to the extent necessary for investigative or law enforcement purposes.

(d) Charitable organizations which do not solicit or receive contributions from the general public other than through affiliated organizations registered under this chapter need not register separately with the Secretary of State; provided, however, that all records of such organizations which relate to charitable solicitations or charitable contributions shall be subject to such reasonable periodic, special, or other examinations by the Secretary of State, within or outside this state, as the Secretary of State deems necessary or appropriate for the protection of the public. The Secretary of State shall not disclose this information except to the extent necessary for investigative or law enforcement purposes.

(e) The Secretary of State is authorized to exempt, by rule, regulation, or order, such entities and organizations from the registration

provisions of Code Section 43-17-5 as he deems necessary and appropriate in the public interest. (Code 1981, § 43-17-9, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 1993, p. 319, § 1; Ga. L. 1996, p. 1261, § 3; Ga. L. 2000, p. 1657, § 9; Ga. L. 2008, p. 683, § 7/HB 1104.)

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1962, p. 496, § 3, former Code 1933, § 35-1003, and former Code Section 43-17-18 are included in the annotations for this Code section.

Church nursing homes need not register. — Religious corporation which operates two nursing homes being managed and directed entirely by members of the Primitive Baptist Church is not required to register with the Secretary of State. 1962 Op. Att'y Gen. p. 41 (decided under Ga. L. 1962, p. 496, § 3).

Chapter does not include fund raising by politicians. — Candidates for public office who solicit contributions in furtherance of their political campaigns are not within the purview of chapter. 1962 Op. Att'y Gen. p. 210 (decided under Ga. L. 1962, p. 496, § 3).

Legislature, in exempting educational institutions from the operation of O.C.G.A. Ch. 17, T. 43, intended to exempt "schools" in the traditional sense of the word, that is, a grammar school, high school, college, or professional or trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students. 1981 Op. Att'y Gen. No. 81-5 (decided under former Code 1933, § 35-1003).

Legislature intended that an organization, otherwise subject to O.C.G.A. Ch. 17, T. 43, would share the exempt status of an educational institution with which it is under common control if the purpose and activities of such organization relate or pertain to those of the educational institution. 1981 Op. Att'y Gen. No. 81-5 (decided under former Code 1933, § 35-1003).

Legislature did not intend to exempt an organization, otherwise sub-

ject to O.C.G.A. Ch. 17, T. 43, by virtue of the fact that the organization was connected with an educational organization in a casual, unusual, or otherwise unanticipated manner. 1981 Op. Att'y Gen. No. 81-5 (decided under former Code 1933, § 35-1003).

Phrase "operated, supervised, or controlled by or in connection with," as used in O.C.G.A. § 43-17-9, means more than under common control; the connection must be one which the legislature could reasonably foresee or contemplate. 1981 Op. Att'y Gen. No. 81-5 (decided under former Code 1933, § 35-1003).

American National Red Cross, as an instrumentality of the United States, is not subject to regulation. 1980 Op. Att'y Gen. No. 80-133 (decided under former Code 1933, § 35-1003).

Southern Christian Leadership Conference, Inc. is not exempt from provisions of O.C.G.A. Ch. 17, T. 43. 1982 Op. Att'y Gen. No. 82-39 (decided under former § 43-17-18).

Southern Christian Leadership Conference, Inc., while conducting activities pursuant to religious principles, is not organized for the purpose of worship and thus does not meet the common and generic understanding which must be accorded the term "religious organization." 1982 Op. Att'y Gen. No. 82-39 (decided under former § 43-17-18).

Social and civic purposes of the Southern Christian Leadership Conference, Inc., even though pursuant to Christian principles, appear to be distinct from the purpose which must have been intended by the legislature in the legislature's "religious organization" exemption. 1982 Op. Att'y Gen. No. 82-39 (decided under former § 43-17-18).

RESEARCH REFERENCES

ALR. — Rights and remedies in respect of membership in, or establishment and maintenance of local post of, American Legion or other veterans' organization, 147 ALR 590.

43-17-10. Administration of chapter.

(a) The administration of this chapter shall be vested in the Secretary of State.

(b) The Secretary of State is authorized to administer oaths in and to prescribe forms for all matters arising under this chapter. The Secretary of State shall cooperate with the administrators of the charitable solicitation laws of other states with a view to assisting those administrators in the enforcement of such laws and to achieving maximum uniformity in the interpretation of like provisions of the laws administered by them and in the forms which are required to be filed under such laws.

(c) The Secretary of State is authorized to employ examiners, clerks, stenographers, and other employees as the administration of that portion of this chapter vested in him may require. The Secretary of State is also authorized to appoint and employ investigators who shall have, in any case that there is reason to believe a violation of this chapter has occurred or is about to occur, the right and power to serve subpoenas and to swear out and execute search warrants and arrest warrants.

(d) The Secretary of State may promulgate such rules and regulations, not inconsistent with the provisions of this chapter, necessary for the administration and enforcement of this chapter. Such rules and regulations shall be promulgated in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(e) The Secretary of State or any persons employed by him shall be paid, in addition to their regular compensation, the transportation fare, board, lodging, and other traveling expenses necessary and actually incurred by each of them in the performance of their duties under this chapter.

(f) The Secretary of State may delegate such of his or her powers and duties under this chapter as he or she desires to a division director in his or her office. Such division director, when duly appointed, shall be the ultimate decision maker in all contested case hearings held pursuant to Code Section 43-17-16 and the "Georgia Administrative Procedure Act."

(g) The Secretary of State may designate filing depositories for all records required to be filed and maintained under this chapter. Such

records may be maintained in original form or by means of microfilm, microfiche, microphotographic reproduction, photographic reproduction, word processing, computerization, or other acceptable reproductive methods.

(h) Except as provided in subsection (i) of this Code section, information and documents filed with or obtained by the Secretary of State are public information and are available for public examination.

(i) The following information and documents do not constitute public information under subsection (h) of this Code section and shall be confidential:

(1) Information or documents obtained by the Secretary of State in connection with an investigation under Code Section 43-17-11; and

(2) Any document or record specifically designated as confidential in accordance with this chapter or the rules and regulations promulgated under this chapter. (Code 1981, § 43-17-10, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 1996, p. 1261, § 4.)

43-17-11. Enforcement of chapter; investigations; subpoenas; cooperation with law enforcement and regulatory agencies.

(a) The Secretary of State, in enforcing this chapter, may:

(1) Make such public or private investigations within or outside of this state as he deems necessary to determine whether any person has violated or is about to violate this chapter or any rule, regulation, or order under this chapter or to aid in the enforcement of this chapter;

(2) Require or permit any person to file a statement in writing, under oath or otherwise as the Secretary of State determines, as to all the facts and circumstances concerning the matter to be investigated; and

(3) Publish in print or electronically information concerning any violation of this chapter or any rule, regulation, or order under this chapter.

(b)(1) For the purpose of conducting any investigation as provided in this Code section, the Secretary of State shall have the power to administer oaths, to call any party to testify under oath at such investigation, to require the attendance of witnesses, to require the production of books, records, and papers, and to take the depositions of witnesses. For such purposes the Secretary of State is authorized to issue a subpoena for any witness or a subpoena for the production of documentary evidence. Such subpoenas may be served by regis-

tered or certified mail or statutory overnight delivery, return receipt requested, to the addressee's business mailing address or by investigators appointed by the Secretary of State or shall be directed for service to the sheriff of the county where such witness resides or is found or where the person in custody of any books, records, or papers resides or is found. The fees and mileage of the sheriff, witness, or person shall be paid from the funds in the state treasury for the use of the Secretary of State in the same manner that other expenses of the Secretary of State are paid.

(2) The Secretary of State may issue and apply to enforce subpoenas in this state at the request of the administrator of the charitable solicitation laws of another state if the activities constituting an alleged violation for which the information is sought would be a violation of this chapter if the activities had occurred in this state.

(c) In case of refusal to obey a subpoena issued under any Code section of this chapter to any person, a superior court of appropriate jurisdiction, upon application by the Secretary of State, may issue to the person an order requiring him to appear before the court to show cause why he should not be held in contempt for refusal to obey the subpoena. Failure to obey a subpoena may be punished by the court as contempt of court.

(d) In addition to any other hearings and investigations which the Secretary of State is authorized or required by this chapter to hold, the Secretary of State is also authorized to hold general investigative hearings on his own motion with respect to any matter under this chapter. A general investigative hearing as provided for in this subsection may be conducted by a person designated by the Secretary of State for that purpose and may, but need not be, transcribed by the Secretary of State or by any other interested party. No formal action may be taken as a result of such investigative hearings, but the Secretary of State may take such action as he deems appropriate, based on the information developed in the hearing and on any other information which he may have.

(e) The Secretary of State may cooperate with the administrator of Part 2 of Article 15 of Chapter 1 of Title 10, known as the "Fair Business Practices Act of 1975," in enforcing the provisions of this chapter. Said cooperation includes, but is not limited to, making a joint examination or investigation; holding joint administrative hearings; filing and prosecuting a joint civil or administrative proceeding; sharing and exchanging information and documents; and disclosing information and documents obtained in connection with an investigation. When the administrator has initiated a civil or administrative proceeding in connection with a joint investigation under this subsection he may publish in print or electronically information concerning any violation

of this chapter or Part 2 of Article 15 of Chapter 1 of Title 10, known as the “Fair Business Practices Act of 1975.”

(f) To encourage uniform interpretation and administration of this chapter and effective regulation and enforcement, the Secretary of State may cooperate with state law enforcement or regulatory agencies and agencies or administrators of one or more states, Canadian provinces or territories, another country, appropriate federal agencies, any national or international organization of officials or agencies, and any governmental law enforcement or regulatory agency. Such cooperation includes, but is not limited to, making a joint registration examination or investigation; holding joint administrative hearings; filing and prosecuting a joint civil or administrative proceeding; sharing and exchanging personnel; sharing and exchanging information and documents; and disclosing information obtained in connection with an investigation under this Code section to the extent provided in this Code section and if disclosure is for the purpose of a civil, administrative, or criminal investigation or proceeding by a local, state, or federal law enforcement or regulatory agency and the receiving agency presents that, under the applicable law, protections exist to preserve the integrity, confidentiality, and security of the information. (Code 1981, § 43-17-11, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted “in print or electronically” in paragraph (a)(3) and in the last sentence of subsection (e).

Editor’s notes. — Ga. L. 2000, p. 1589,

§ 16, not codified by the General Assembly, provides that the amendment to paragraph (b)(1) is applicable with respect to notices delivered on or after July 1, 2000.

43-17-12. Prohibited acts.

(a) It shall be unlawful for any person to violate any provision of this chapter or any rule, regulation, subpoena, or order promulgated or issued by the Secretary of State under this chapter.

(b) It shall be unlawful for any person who is registered as, or making application for registration as, a solicitor agent or paid solicitor or charitable organization or is an affiliate of such registrant or applicant knowingly to make or cause to be made to the Secretary of State or anyone acting on his or her behalf any written or oral statement or statements which the person knows to contain any untrue statement of material fact or to omit to state a material fact that is necessary in order to make any statement or statements made, in light of the circumstances under which they were made, not misleading.

(c) It shall be unlawful for any person in connection with the planning, conduct, or execution of any charitable solicitation or charitable sales promotion, directly or indirectly:

(1) To utilize any representation that implies the contribution is for or on behalf of a charitable organization or to utilize any emblem, device, or printed matter belonging to or associated with a charitable organization, without first being authorized in writing to do so by the charitable organization;

(2) To utilize a name, symbol, or statement so closely related or similar to that used by another charitable organization that the use thereof would tend to confuse or mislead a solicited person;

(3) To misrepresent to or mislead anyone in any manner to believe that any other person sponsors, endorses, or approves such solicitation or charitable sales promotion when such other person has not given consent in writing to the use of his or her name for these purposes;

(4) To utilize or exploit the fact of registration so as to lead any person to believe that such registration in any manner constitutes an endorsement or approval by the state;

(5) To represent directly or by implication that a charitable organization will receive a fixed or estimated percentage of the gross revenue from a solicitation campaign greater than that identified in filings with the Secretary of State pursuant to this chapter;

(6) To represent that tickets to events will be donated for use by another, unless the paid solicitor shall have commitments, in writing, from charitable organizations stating that they will accept donated tickets and specifying the number of tickets they are willing to accept;

(7) To represent that any part of the contributions received will be given or donated to any other charitable organization unless such organization has consented in writing to the use of its name prior to the solicitation; or

(8) To fail to provide to a person who has been solicited for a contribution the information described in Code Section 43-17-8.

(d) It shall be unlawful for any person in connection with the planning, conduct, or execution of any charitable solicitation or charitable sales promotion, directly or indirectly:

(1) To employ a device, scheme, or artifice to defraud;

(2) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon a person;

(3) To misrepresent or mislead anyone in any manner to believe that the person on whose behalf a solicitation or charitable sales promotion is being conducted is a charitable organization or that the proceeds of such solicitation or charitable sales promotion will be used for charitable purposes if such is not the fact; or

(4) To misappropriate, convert, illegally withhold, or fail to account for any charitable contributions solicited by, or on behalf of, any charitable organization required to be registered pursuant to this chapter.

(e) It shall be unlawful for any paid solicitor to have physical possession or legal control of a contribution collected by it in or from this state on behalf of any charitable organization without having complied with the requirements of paragraph (3) or (6) of subsection (c) of Code Section 43-17-3, as applicable, and Code Section 43-17-4. (Code 1981, § 43-17-12, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 1996, p. 1261, § 5; Ga. L. 2000, p. 136, § 43; Ga. L. 2000, p. 1657, § 10; Ga. L. 2008, p. 683, § 8/HB 1104.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, “chapter” was substituted for “Code section” at the end of paragraph (c)(5).

OPINIONS OF THE ATTORNEY GENERAL

Editor’s notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1962, p. 496, § 10 are included in the annotations for this Code section.

Permission would be required before Joint Tech-Georgia Fund could publish names of contributors. 1962 Op. Att’y Gen. p. 581 (decided under Ga. L. 1962, p. 496, § 10).

43-17-13. Penalties; cease and desist orders; injunctions; restitution; appointment and powers of receiver; subpoenas.

(a) Whenever it may appear to the Secretary of State, either upon complaint or otherwise, that any person has engaged in or is engaging in or is about to engage in any act, practice, or transaction which is prohibited by this chapter or by any rule, regulation, or order of the Secretary of State promulgated or issued pursuant to any Code section of this chapter or which is declared to be unlawful under this chapter, the Secretary of State may, at his discretion, act under any or all of the following paragraphs and may:

(1) Impose administrative sanctions as provided in this paragraph:

(A) Subject to notice and opportunity for hearing in accordance with Code Section 43-17-16, unless the right to notice is waived by the person against whom the sanction is imposed, the Secretary of State may:

- (i) Issue a cease and desist order against any person;
- (ii) Censure the person if the person is registered as a paid solicitor;

(iii) Bar or suspend the person from association with a paid solicitor or charitable organization; or

(iv) Issue an order against a paid solicitor who willfully violates this chapter, imposing a civil penalty up to a maximum of \$2,500.00 for a single violation or up to \$25,000.00 for multiple violations in a single proceeding or a series of related proceedings;

(B) Imposition of the sanctions under this paragraph is limited as follows:

(i) If the Secretary of State revokes the registration of a charitable organization or paid solicitor or bars a person from association with a charitable organization or paid solicitor under subparagraph (A) of this paragraph, the imposition of that sanction precludes imposition of the sanction specified in division (iv) of subparagraph (A) of this paragraph; and

(ii) The imposition by the Secretary of State of one or more sanctions under this paragraph with respect to a specific violation precludes the Secretary of State from later imposing any other sanctions under this paragraph with respect to the violation;

(C) For the purpose of determining the amount or extent of a sanction, if any, to be imposed under subparagraph (A) of this paragraph, the Secretary of State shall consider, among other factors, the frequency, persistence, and willfulness of the conduct constituting a violation of this chapter or a rule promulgated under this chapter or an order of the Secretary of State, the number of persons adversely affected by the conduct, and the resources of the person committing the violation;

(2) Seek civil sanctions by applying to any superior court of competent jurisdiction in this state, which court:

(A) Upon a showing by the Secretary of State that a person has violated this chapter, a rule promulgated under this chapter, or an order of the Secretary of State, may enter or grant:

(i) A temporary restraining order, permanent or temporary injunction, or a writ of prohibition or mandamus;

(ii) A civil penalty up to a maximum of \$2,500.00 for a single violation or up to \$25,000.00 for multiple violations in a single proceeding or a series of related proceedings;

(iii) A declaratory judgment;

(iv) Restitution to contributors;

(v) An order of disgorgement;

(vi) The appointment of a receiver, auditor, or conservator for the defendant or the defendant's assets; or

(vii) Other relief as the court deems just and equitable;

(B) May, upon a showing by the Secretary of State that the defendant is about to violate this chapter, a rule promulgated under this chapter, or an order of the Secretary of State, issue:

(i) A temporary restraining order;

(ii) A temporary or permanent injunction;

(iii) A writ of prohibition or mandamus; or

(iv) Such other relief as the court deems just and equitable;

(C) In determining the appropriate relief to grant, shall consider enforcement action taken and sanctions imposed by the Secretary of State under paragraph (1) of this subsection in connection with the transaction or transactions constituting a violation of this chapter, a rule promulgated under this chapter, or an order of the Secretary of State; or

(3) Transmit such evidence as may be available concerning such act, practice, or transaction to any district attorney or to the Attorney General, who may, at his individual discretion, institute the necessary criminal proceedings.

(b) In any proceedings for an injunction, the Secretary of State may apply for and be entitled to have issued the court's subpoena requiring:

(1) The appearance forthwith of any defendant and the defendant's agents, employees, partners, officers, or directors or the members of a defendant limited liability company; and

(2) The production of such documents, books, and records as may appear necessary for the hearing upon the petition for an injunction.

(c) In any action brought under subsection (a) of this Code section, the court, upon application of the state, may appoint a receiver for the assets of the defendant where it has been established:

(1) That the defendant has engaged in a pattern of willful violations of this chapter which has resulted in substantial actual damage to citizens of this state;

(2) That the defendant is outside this state or is actually removing or about to remove himself or his property outside the limits of this state or conceals himself or his property; or

(3) That the appointment of the receiver is necessary to preserve the assets of the defendant for the benefit of citizens of the state damaged by the defendant's violations of this chapter.

(d) When a receiver is appointed by the court pursuant to this chapter, he shall have the power to bring an action for, collect, receive, and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes, and property of every description, derived by any means in violation of this chapter, including property with which such property has been mingled. He shall have the power to sell, convey, and assign the same and to hold and dispose of the proceeds thereof under the direction of the court. The court shall have jurisdiction of all questions arising in such proceedings and may make such orders and judgments therein as may be required.

(e) In any criminal proceeding either the district attorney or the Attorney General or both may apply for and be entitled to have issued the court's subpoena requiring:

(1) The appearance forthwith of any defendant or the defendant's agents, employees, partners, officers, or directors or the members of a defendant limited liability company; and

(2) The production of such documents, books, and records as may appear necessary for the prosecution of such criminal proceedings. (Code 1981, § 43-17-13, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 1993, p. 123, § 38.)

43-17-14. Recovery of damages; class actions.

(a) Any person who suffers injury or damages as a result of acts or practices in violation of this chapter may bring an action against the charitable organization or paid solicitor engaged in such acts or practices. The person may recover such general damages sustained as a result of such acts or practices. Exemplary damages and attorney's fees may be awarded in cases of intentional violations of this chapter.

(b) Any person entitled to bring an action under this chapter may institute a class action pursuant to Code Section 9-11-23 for the recovery of damages. (Code 1981, § 43-17-14, enacted by Ga. L. 1988, p. 490, § 1.)

43-17-15. Venue.

For the purposes of venue for any civil or criminal action under this chapter, any violation of this chapter or of any rule, regulation, or order promulgated under this chapter shall be considered to have been

committed in any county in which any act was performed in furtherance of the transaction which violated this chapter, in the county of any violator's principal place of business in this state, in the county of the charitable organization's principal place of business in this state, and in any county in which any violator had control or possession of any proceeds of the violation or any books, records, documents, or other material or objects which were used in furtherance of the violation. (Code 1981, § 43-17-15, enacted by Ga. L. 1988, p. 490, § 1.)

43-17-16. Hearings; notice; powers and orders of the Secretary of State.

(a) Where the Secretary of State has issued any order forbidding the solicitation or acceptance of contributions under Code Section 43-17-7, he or she shall promptly send to the charitable organization a notice of opportunity for hearing. Before entering an order refusing to register any person under Code Section 43-17-3 or 43-17-5 and after the entering of any order for revocation or suspension, the Secretary of State shall promptly send to such person and if such person is a paid solicitor to the charitable organization who employs or proposes to employ such person, a notice of opportunity for hearing. Hearings shall be conducted pursuant to this Code section by the Secretary of State or a person designated by the Secretary of State.

(b) Notices of opportunity for hearing shall be served by investigators appointed by the Secretary of State or sent by registered or certified mail or statutory overnight delivery, return receipt requested, to the addressee's business mailing address or residential address as shown on information filed with the Secretary of State or directed for service to the sheriff of the county where such person resides or is found. Such notice shall state:

(1) The order which has been issued or which is proposed to be issued;

(2) The ground for issuing such order or proposed order; and

(3) That the person to whom such notice is sent will be afforded a hearing upon request if such request is made within ten days after receipt of the notice.

(c) Whenever a person requests a hearing in accordance with this Code section, there shall immediately be set a date, time, and place for such hearing and the person requesting such hearing shall forthwith be notified thereof. Except as provided in subsection (b) of Code Section 43-17-7, the date set for such hearing shall be within 30 days, but not earlier than five days after the request for hearing has been made, unless otherwise agreed to by the charitable organization and the persons requesting the hearing.

(d) For the purpose of conducting any hearing as provided in this Code section, the Secretary of State shall have the power to administer oaths, to call any party to testify under oath at such hearing, to require the attendance of witnesses and the production of books, records, and papers, and to take the depositions of witnesses; and for such purposes the Secretary of State is authorized, at the request of the person requesting the hearing or upon his or her own initiative, to issue a subpoena for any witness or a subpoena for production of documentary evidence to compel the production of any books, records, or papers. The subpoenas may be served by registered or certified mail or statutory overnight delivery, return receipt requested, to the addressee's business mailing address or residential address as shown on information filed with the Secretary of State or by investigators appointed by the Secretary of State or shall be directed for service to the sheriff of the county where such witness resides or is found or where the person in custody of any books, records, or papers resides or is found. The fees and mileage of the sheriff, witness, or person shall be paid from the funds in the state treasury for the use of the Secretary of State in the same manner that other expenses of the Secretary of State are paid.

(e)(1) At any hearing conducted under this Code section, a party or any affected person may appear in his or her own behalf or may be represented by an attorney.

(2) A stenographic record of the testimony and other evidence submitted shall be taken unless the Secretary of State and the persons requesting the hearing shall agree that such a stenographic record of the testimony shall not be taken.

(3) The Secretary of State shall pass upon the admissibility of such evidence, but a party may at any time make objections to any such rulings thereon; and, if the Secretary of State refuses to admit evidence, the party offering the same shall make a proffer thereof and such proffer shall be made a part of the record of the hearing.

(f)(1) In the case of any hearing conducted under this Code section, the Secretary of State may conduct the hearing or may appoint a referee to conduct the hearing who shall have the same powers and authority in conducting the hearing as are granted in this Code section to the Secretary of State.

(2) The referee shall have been admitted to the practice of law in this state and possess such additional qualifications as the Secretary of State may require.

(3) In any case where a hearing is conducted by a referee, the referee shall submit to the Secretary of State a written report including the transcript of the testimony and evidence (if such transcript is requested by the Secretary of State), the findings of fact

and conclusions of law, and a recommendation of action to be taken by the Secretary of State. Within five days of the time of submission thereof to the Secretary of State, a copy of such written report and recommendations shall be served upon the person who requested the hearing or his or her attorney or other representative of record by registered or certified mail or statutory overnight delivery. That person or his or her attorney, within ten days of service of the copy of such written report and recommendations, may file with the Secretary of State written objections to the report and recommendations which shall be considered by the Secretary of State before a final order is entered.

(4) No recommendation of the referee shall be approved, modified, or disapproved by the Secretary of State until after ten days after service of such report and recommendations as provided in this subsection.

(5) The recommendations of the referee may be approved, modified, or disapproved by the Secretary of State. The Secretary of State may direct his or her referee to take additional testimony or to permit the introduction of further documentary evidence.

(6) In any hearing conducted by a referee, a transcript of testimony, evidence, and objections, if any, shall have the same force and effect as if such hearing or hearings had been conducted by the Secretary of State.

(7) All recommendations of the referee shall be advisory only and shall not have the effect of an order of the Secretary of State.

(g) If the Secretary of State does not receive a request for a hearing within the prescribed time, he or she may permit an order previously entered to remain in effect or may enter a proposed order. If a hearing is requested and conducted as provided in this Code section, the Secretary of State shall issue a written order which shall:

(1) Set forth his or her findings with respect to the matters involved; and

(2) Enter an order in accordance with his or her findings.

(h) All orders entered pursuant to Code Sections 43-17-3, 43-17-5, 43-17-7, and 43-17-13 shall be entered pursuant to this Code section, except where:

(1) The Secretary of State deems that the public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in the order, in which case the order may be effective immediately pending proceedings, which proceedings shall be promptly instituted and determined; or

(2) The order is expressly required by a court order, to be made without the right to a hearing or continuance of any type. (Code 1981, § 43-17-16, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2008, p. 683, § 9/HB 1104.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this

Code section is applicable with respect to notices delivered on or after July 1, 2000.

43-17-17. Appeals.

(a) An appeal may be taken from any order of the Secretary of State resulting from a hearing held in accordance with Code Section 43-17-16 by any person adversely affected thereby to the Superior Court of Fulton County by serving the Secretary of State, within 20 days after the date of entry of such order, a written notice of appeal, signed by the appellant, stating:

(1) The order from which the appeal is taken;

(2) The ground upon which a reversal or modification of the order is sought; and

(3) A demand for a certified transcript of the record of the order.

(b) Upon receipt of the notice of appeal, the Secretary of State shall, within ten days thereafter, make, certify, and deliver to the appellant a transcript of the record of the order from which the appeal is taken, provided that the appellant shall pay the reasonable costs of such transcript. The appellant, within five days after receipt of the transcript, shall file such transcript and a copy of the notice of appeal with the clerk of the court. The notice of appeal and transcript of the record shall constitute appellant's complaint. The complaint shall thereupon be entered on the trial calendar of the court.

(c) If the order of the Secretary of State shall be reversed, the court shall by its mandate specifically direct the Secretary of State as to his further action in the matter, including the making and entering of an order or orders in connection therewith and the conditions, limitations, or restrictions to be therein contained. (Code 1981, § 43-17-17, enacted by Ga. L. 1988, p. 490, § 1.)

43-17-18. Service of process.

Where a consent to service of process is required under this chapter, such consent to service of process shall be in the form prescribed by the Secretary of State, shall be irrevocable, and shall provide that actions arising out of or founded upon the solicitation of charitable contributions in violation of this chapter may be commenced against the person

executing such consent in any court of competent jurisdiction and proper venue within this state by the service of process or pleadings upon the Secretary of State. Service of any such process or pleadings in any such action against a person who has filed a consent to service with the Secretary of State shall, if made on the Secretary of State, be by duplicate copies, one of which shall be filed in the office of the Secretary of State and the other shall immediately be forwarded by the Secretary of State by registered or certified mail or statutory overnight delivery to the persons against whom such process or pleadings are directed at his latest address on file in the office of the Secretary of State. (Code 1981, § 43-17-18, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

43-17-19. Applicability of “Fair Business Practices Act of 1975.”

Notwithstanding any other law to the contrary, a solicitation shall be deemed to be a consumer act or practice or consumer transaction under Part 2 of Article 15 of Chapter 1 of Title 10, the “Fair Business Practices Act of 1975.” Nothing contained in this chapter shall be construed to limit the authority of the administrator to take any action under the “Fair Business Practices Act of 1975” regarding unfair and deceptive acts or practices in a solicitation or in solicitations. (Code 1981, § 43-17-19, enacted by Ga. L. 1988, p. 490, § 1.)

43-17-20. Secretary of State immune from liability and suit.

For any action taken or any proceeding had under this chapter or under color of law, the Secretary of State shall be immune from liability and suit to the same extent that any judge of any court of general jurisdiction in this state would be immune. (Code 1981, § 43-17-20, enacted by Ga. L. 1988, p. 490, § 1.)

43-17-21. Burden of proof on persons claiming exemption or exception; certified copies; certificate of compliance or noncompliance.

(a) In a civil or administrative proceeding under this chapter, a person claiming an exemption or an exception from a definition has the burden of proving this exemption or exception.

(b) In a criminal proceeding, the burden of going forward with evidence of a claim of exemption or exception from a definition is on the person claiming the exemption or exception.

(c) In any action, civil or criminal, copies, photostatic or otherwise, certified by the Secretary of State of any documents filed in his office and of any of his records shall be admissible with the same effect as the original of such documents or records would have if actually produced.

(d) In any action, civil or criminal, a certificate signed and sealed by the Secretary of State, stating compliance or noncompliance with this chapter, shall constitute prima-facie evidence of such compliance or noncompliance with this chapter and shall be admissible in any such action. (Code 1981, § 43-17-21, enacted by Ga. L. 1988, p. 490, § 1.)

43-17-22. Provisions of chapter govern criminal or civil proceedings.

Any criminal proceeding or civil proceeding, including but not limited to judicial review of all administrative orders, instituted under this chapter shall be governed by the provisions of this chapter as such provisions existed in full force and effect on the date of the alleged commission of the underlying facts or circumstances which constitute evidence of the commission of a crime or violation of this chapter, notwithstanding any subsequent amendment to this chapter, unless the General Assembly shall specifically declare otherwise, except that no civil or criminal proceeding shall be instituted after the lapse of the appropriate period of limitations which was in effect at the time the cause of action arose or the alleged commission of the crime occurred. (Code 1981, § 43-17-22, enacted by Ga. L. 1988, p. 490, § 1.)

43-17-23. Violations of chapter.

(a) Except as provided in subsection (b) of this Code section, any person who shall willfully violate any provision of this chapter shall be guilty of a misdemeanor.

(b) Any person who shall willfully violate subsection (d) of Code Section 43-17-12 shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than \$5,000.00 or imprisonment for not less than one nor more than five years, or both.

(c) Nothing in this chapter shall limit any statutory or common-law right of the state to punish any person for violation of any law. (Code 1981, § 43-17-23, enacted by Ga. L. 1988, p. 490, § 1.)

CHAPTER 18

FUNERAL DIRECTORS AND ESTABLISHMENTS,
EMBALMERS, AND CREMATORIES

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- 43-18-73. Renewal of licenses for the operation of funeral establishments and crematories; changes in ownership.
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- 43-18-77. Funeral establishment or crematory temporarily without services of funeral director.

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- 43-18-78. Temporary destruction of licensed funeral establishment or crematory; use of temporary location during grace period.
- 43-18-79. Death of license holder.
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Article 2

Contracts for Preneed Funeral Services

43-18-90 through 43-18-108 [Repealed].

Cross references. — Prohibition against certain contracts and activities by

insurers relating to provision of funeral services for insureds, § 33-1-10 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 39 Am. Jur. 2d, Health, §§ 1 et seq., 26 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 39A C.J.S., Health and Environment, §§ 3 et seq., 37 et seq., 48 et seq. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S.,

States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Liability of undertaker or funeral director for injury to passenger in vehicle furnished by former, 29 ALR 827.

Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

Validity and construction of conditions in title to burial lot or regulations by cemetery company as regards monuments, vaults, and the like, 174 ALR 977.

Validity of statutes regulating preneed contracts for the sale or furnishing of burial services and merchandise, 68 ALR2d 1251.

Validity and construction of statute, ordinance, or other regulation in relation to funeral directors and embalmers, 89 ALR2d 1338.

Civil liability of undertaker for acts or omissions relating to corpse, 48 ALR3d 240; 18 ALR4th 858; 53 ALR4th 360.

Recoverability of compensatory damages for mental anguish or emotional distress for breach of service contract, 54 ALR4th 901.

ARTICLE 1

**FUNERAL DIRECTORS AND ESTABLISHMENTS, EMBALMERS,
AND CREMATORIES**

Cross references. — Disposition of dead bodies generally, T. 31, C. 21.

Editor's notes. — Ga. L. 1990, effective April 11, 1990, repealed the Code sections formerly codified at this article and enacted the current article. The former article, pertaining to funeral directors, embalmers, and operators of funeral establishments, consisted of Code Sections 43-18-1 through 43-18-8 (Part 1 of Article 1), 43-18-20 through 43-18-23 (Part 2 of Article 1), 43-18-40 through 43-18-50 (Part 3 of Article 1), and 43-18-70 through 43-18-77 (Part 4 of Article 1). These Code sections were based on Ga. L. 1899, p. 70, §§ 1-9; Civil Code 1910, §§ 1712-1720; Penal Code 1910, § 411; Ga. L. 1916, p. 77, §§ 1, 3; Ga. L. 1925, p. 188, § 2; Ga. L. 1933, p. 132, §§ 1, 2, 5, 6, 9; Code 1933, §§ 84-801 — 84-812, 84-816, 84-819 — 84-823, 84-827 —

84-829, 84-9912, 84-9913; Ga. L. 1935, p. 485, §§ 1-3; Ga. L. 1943, p. 307, §§ 1, 2; Ga. L. 1950, p. 238, §§ 1-14, 17-20, 24-29; Ga. L. 1959, p. 359, § 1; Ga. L. 1960, p. 806, §§ 1-10; Ga. L. 1966, p. 377, § 1; Ga. L. 1967, p. 811, § 1; Ga. L. 1975, p. 1152, § 1; Ga. L. 1976, p. 233, §§ 1, 2; Ga. L. 1978, p. 1002, § 1; Ga. L. 1978, p. 1359, §§ 1-4; Ga. L. 1980, p. 1097, §§ 2-6; Code 1981, § 43-18-8; Ga. L. 1984, p. 22, § 43; Ga. L. 1984, p. 511, §§ 1-3.

Ga. L. 1990, p. 1372, § 2, not codified by the General Assembly, provides that: "nothing in this Act shall prohibit any funeral home director to conduct business outside of his or her county of residence."

Administrative rules and regulations. — Organization, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Funeral Service, Chapter 230-1.

PART 1

GENERAL PROVISIONS

43-18-1. Definitions.

As used in this article, the term:

(1) "Alternative container" means any receptacle or enclosure which is of sufficient strength to be used to hold and to transport a dead human body.

(2) "Apprentice" means a person who practices embalming, funeral directing, or both, under the direct supervision of a funeral director, embalmer, or both, in this state.

(3) "Board" means the State Board of Funeral Service.

(4) "Casket" means a container which is designed for the encasement and viewing of a dead human body.

(5) "Cremation" means the reduction of the dead human body to residue by intense heat.

(6) "Crematory" means any place where cremation is performed, other than a hospital, clinic, laboratory, or other facility authorized by the Department of Community Health for such purposes.

(7) "Direct supervision" means that the embalmer, funeral director, or both, are present overseeing the activities of the apprentice.

(8) "Embalmer" means a person who practices embalming or uses in connection with that person's name the words "embalmer," "licensed embalmer," "undertaker," or "mortician" or offers or holds himself or herself out as offering such services.

(9) "Final disposition" means the final disposal of a dead human body whether it is by, but not limited to, earth interment, above-ground interment, cremation, burial at sea, or delivery to a medical institution for lawful dissection if the medical institution assumes responsibility for disposal.

(10) "Funeral" or "funeral services" means the observances, services, or ceremonies held for dead human bodies.

(11) "Funeral director" means a person who practices funeral directing or uses in connection with that person's name or with a picture of that person the words "funeral director," "licensed funeral director," "undertaker," or "mortician" or offers or holds himself or herself out as offering such services.

(12) "Funeral director in full and continuous charge" means a funeral director who is approved by the board to assume full responsibility for the operations of a particular funeral establishment and who shall ensure that said establishment complies with this article and with all rules promulgated pursuant thereto.

(13) "Funeral establishment" means a place where embalming or funeral directing is practiced and which is open to the public and transacting business relating to funeral services.

(14) "Funeral merchandise" means the goods that may only be sold or offered for sale by a funeral director working in a funeral establishment and includes, but is not limited to, a casket or alternative container, but does not include an outer burial container or cemetery marker.

(15) "Funeral service contract" means a written or oral agreement between a funeral director or funeral establishment and a legally authorized person for the embalming, funeral, or final disposition of a dead human body.

(16) "Legally authorized person" means the deceased's surviving spouse, a son or daughter who is 18 years of age or older; the deceased's parent, a brother or sister who is 18 years of age or older; any other person who is 18 years of age or older and who is in the next degree of kinship to the deceased; the deceased's guardian or personal representative; or a public health officer.

(17) “Outer burial container” means an enclosure into which a casket is placed, including, but not limited to, a vault made of concrete, steel, fiberglass, or copper, a sectional concrete enclosure, a crypt, or a wooden enclosure.

(18) “Practice of embalming” means disinfecting or preserving or attempting to disinfect or preserve dead human bodies by replacing certain body fluids with preserving and disinfecting chemicals.

(19) “Practice of funeral directing” means making or directing, at need or preneed, arrangements for the preparation and transportation of dead human bodies for final disposition and the supervision and direction of all funeral services.

(20) “Retort” means a furnace where dead human bodies are cremated.

(21) “Soliciting” means the making of any uninvited contact with another person by a funeral director or by a funeral director’s agent, assistant, employer, or employee for the purpose of the sale of funeral services or merchandise but shall not mean any advertising which is directed to the public in general. (Code 1981, § 43-18-1, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 1992, p. 2762, § 1; Ga. L. 2002, p. 641, § 3; Ga. L. 2009, p. 453, § 1-4/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted “Department of Community Health” for “Department of Human Resources” in paragraph (6).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, a period

was substituted for a semicolon at the end of paragraph (18).

Law reviews. — For note on the 2002 amendment of this Code section, see 19 Georgia St. U.L. Rev. 200 (2002).

JUDICIAL DECISIONS

Cited in Smith v. Poteet, 127 Ga. App. 735, 195 S.E.2d 213 (1972); City of Atlanta

v. Shrader, 185 Ga. App. 691, 365 S.E.2d 449 (1988).

OPINIONS OF THE ATTORNEY GENERAL

Editor’s notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1950, pp. 238 and 240 are included in the annotations for this Code section.

Jurisdiction to perform services on hair of deceased persons is shared between funeral directors and cosmetologists. — Effect of 1966 amendments to the former Barbers’ and Cosmetologists’ Acts was to confer as between barbers and cosmetologists extra jurisdiction upon cosmetologists in regard to services per-

formed upon hair of deceased persons; the extra jurisdiction conferred upon cosmetologists, however, is not absolute but must be considered as being shared with that of funeral directors. 1965-66 Op. Att’y Gen. No. 66-180 (decided under prior law).

Persons in business or profession of cremating dead human bodies are “funeral directors” and are engaged in “funeral directing” within the meaning of Ga. L. 1950, pp. 238, 240 (see O.C.G.A. § 43-18-1). The places of business where persons engage in the business or profes-

sion of cremating dead human bodies are "funeral establishments". 1981 Op. Att'y Gen. No. 81-45.

Crematories are clearly subject to

regulation under Ga. L. 1950, p. 238 et seq. (see O.C.G.A. Ch. 18, T. 43). 1981 Op. Att'y Gen. No. 81-45.

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d., Funeral Directors and Embalmers, § 1 et seq.

ALR. — Liability of undertaker or funeral director for injury to passenger in vehicle furnished by former, 29 ALR 827.

Construction and application of zoning regulations in connection with funeral homes, 92 ALR3d 328.

43-18-2. Declaration of policy.

It is declared that this article shall be deemed an exercise of the health powers of the state for the prevention of the spread of infectious, communicable, and contagious diseases and for the protection of the sanitation, health, and welfare of the people of this state; and that all of this article and the regulations authorized to be made pursuant to it are necessary to effectuate its purpose. (Code 1981, § 43-18-2, enacted by Ga. L. 1990, p. 1372, § 1.)

JUDICIAL DECISIONS

Cited in Smith v. Poteet, 127 Ga. App. 735, 195 S.E.2d 213 (1972).

43-18-3. Practicing without complying with article.

(a) It shall be unlawful for any person to engage in the practice of embalming or to represent to the public that such person is an embalmer, mortician, or undertaker without first complying with this article.

(b) It shall be unlawful for any person to engage in the business or profession of funeral directing or to represent to the public that such person is a funeral director, undertaker, or mortician without first complying with this article.

(c) Any person who actively engages or participates in any way in the business or profession of funeral directing shall be considered to be practicing as a funeral director and must be a licensed funeral director under the terms of this article. (Code 1981, § 43-18-3, enacted by Ga. L. 1990, p. 1372, § 1.)

JUDICIAL DECISIONS

Cited in *Smith v. Poteet*, 127 Ga. App. 735, 195 S.E.2d 213 (1972).

43-18-4. Unlicensed practice as constituting public nuisance; injunctions.

The practice of embalming or funeral directing, as defined in this article, is declared to be a business or profession affecting the public interest and involving the health and safety of the public. Such practice by a person who is not licensed to practice in this state is declared to be a public nuisance; and any citizen of this state, the board, or the appropriate prosecuting attorney where such practice is carried on by such unlicensed person may, on behalf of the public, bring an action in the superior court of the county where such nuisance exists or is carried on to restrain and abate the same. On satisfactory proof to the judge of the superior court that such illegal practice or business of funeral directing or embalming is being carried on, the judge shall issue a temporary injunction against the party or parties operating such practice or business until they have qualified and been licensed under the terms of this article. (Code 1981, § 43-18-4, enacted by Ga. L. 1990, p. 1372, § 1.)

RESEARCH REFERENCES

ALR. — Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90. Funeral home as private nuisance, 8 ALR4th 324.

43-18-5. Unlawful acts; exemption.

(a) It shall be unlawful for any person, firm, or corporation or any officer, agent, or employee of such person, firm, or corporation to practice or hold out to the public that such person, firm, or corporation as practicing embalming or funeral directing, or to act as an embalmer or funeral director, or to assist in so doing as an apprentice, without having complied with this article, or to practice embalming or funeral directing without having paid the fee for license renewal prior to the expiration of that license as provided for in this article.

(b) Any person, firm, or corporation who has control of a funeral establishment or crematory and fails to obtain licensure as required by this article, upon conviction thereof, may be fined not less than \$100.00 nor more than \$500.00 for each violation. Each day that the funeral establishment or crematory is operated in violation of this article shall be deemed to be a separate and distinct offense.

(c) Any persons representing themselves as an embalmer or funeral director without having first complied with this article shall be deemed and considered guilty of practicing without a license and the use of these terms shall be prima-facie evidence of guilt.

(d) It shall be unlawful for any person, firm, or corporation or any officer, agent, or employee of such person, firm, or corporation engaged in the funeral or crematory business to give, or contract to give, either directly or indirectly, any reward, commission, compensation, or anything of value to any person, firm, or corporation for the purpose of, or as an inducement to, such person, firm, or corporation to persuade or induce any person to use or employ such funeral director or embalmer in or about the preparation for burial or conducting the burial of any deceased person.

(e) It shall be unlawful for any funeral director, embalmer, firm, or corporation, or any officer, agent, or employee of such person, firm, or corporation engaged in the funeral business for compensation or otherwise to influence, or attempt to influence, by persuasion, argument, or suggestion, the family or friends of any deceased person as to where the body should or should not be buried.

(f) It shall be unlawful for any funeral establishment, funeral director, or embalmer to refuse to release a dead human body to a legally authorized person upon request of that person, but the release of such body shall not constitute a release of any indebtedness or other claim owed for any services performed on that body by the person or entity releasing that body.

(g) Accredited colleges of funeral service and those otherwise approved by the board are authorized to perform on-campus embalming operations subject to satisfying inspection standards as established by the board. Nothing in this article shall require any person who is currently enrolled full time or part time in a program at an accredited college of funeral service or such other college as provided by rule to be licensed or registered as provided in this article when obtaining practical training in embalming or funeral directing under the supervision of a licensed embalmer, funeral director, or both, at such college or at a funeral establishment; provided, however, that any licensed embalmer, funeral director, or both, who supervise such student shall be responsible for the acts of such student. (Code 1981, § 43-18-5, enacted by Ga. L. 1990, p. 1372, § 1.)

Cross references. — False or fraudulent advertising, § 10-1-420 et seq. Requirements regarding disposition of dead bodies generally, T. 31, C. 21.

43-18-6. Penalty.

Any person, firm, or corporation or any officer, agent, or employee of such person, firm, or corporation who violates this article shall be guilty of a misdemeanor. (Code 1981, § 43-18-6, enacted by Ga. L. 1990, p. 1372, § 1.)

43-18-7. Termination.

Reserved. Repealed by Ga. L. 1992, p. 3137, § 15, effective July 1, 1992.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, the designation of this Code section was reserved.

Editor's notes. — This Code section was based on Ga. L. 1990, p. 1372, § 1.

43-18-8. Identification of body or remains of deceased; affidavit required for cremated remains.

(a)(1) The funeral director or person in charge of final disposition of a dead body shall, prior to the interment or cremation of such dead body, affix on the ankle or wrist of the deceased a tag of durable, noncorroding material permanently marked with the name of the deceased, the date of death, the social security number of the deceased, the county and state of death, and the serial number of any prosthesis removed from the dead body by the funeral establishment or crematory.

(2) No funeral director in charge of a crematory shall permit any dead body to be on the premises of the crematory without the dead body being identified as provided by this subsection, except when the body is placed in the retort; and the tag shall be removed from the body and kept in a regular location near the retort during cremation and thereafter placed atop the cremated remains on the inside of the vessel and any liner therein. The vessel containing cremated remains shall be plainly labeled on the outside so as to identify the deceased with the same information, excluding social security number, as is required to be on the tag inside the vessel and so as to identify the name of the person or firm to which such remains are to be delivered or released.

(3) Tags and labels used for purposes of this subsection shall be in such standard forms as prescribed by the board. If the religious faith of the deceased prohibits such means of identification, alternative means of identification of the body may be used.

(b) A crematory may deliver or release cremated remains to a funeral establishment or a legally authorized person. The funeral director in charge of a crematory shall provide to the funeral establishment or

legally authorized person to whom cremated remains are delivered or released, at the time of such delivery or release, a written statement, on such standard form as prescribed by the board, signed and verified by such funeral director before a person authorized to administer oaths and attesting that the vessel contains substantially the remains of the deceased identified in accordance with subsection (a) of this Code section.

(c) No funeral establishment shall accept or take delivery of any cremated remains from any crematory unless the vessel containing such remains is labeled as required by paragraph (2) of subsection (a) of this Code section and is accompanied by the affidavit required by subsection (b) of this Code section, which vessel and affidavit shall be provided by the funeral establishment to a legally authorized person upon delivery or release of the cremated remains. (Code 1981, § 43-18-8, enacted by Ga. L. 1995, p. 839, § 1; Ga. L. 2002, p. 641, § 4.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, “the” was inserted preceding “person” near the end of paragraph (a)(2).

Law reviews. — For note on the 2002 amendment of this Code section, see 19 Georgia St. U.L. Rev. 200 (2002).

PART 2

STATE BOARD OF FUNERAL SERVICE

43-18-20. Continuation of board.

The State Board of Funeral Service existing immediately prior to April 11, 1990, is continued in existence and shall be constituted as provided in this article with the powers, duties, and authority vested in such board by this article. (Code 1981, § 43-18-20, enacted by Ga. L. 1990, p. 1372, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, “April 11, 1990,” was substituted for “the effective date of this article”.

43-18-21. Composition of board; qualifications of members; vacancies; removal of members.

(a) The board shall consist of six members who shall be licensed and practicing funeral directors and embalmers with a minimum of five years as such in this state immediately preceding their appointment and one member who shall have no connection whatsoever with the funeral service industry but who shall have a recognized interest in consumer affairs and in consumer protection concerns.

(b) The members of the board shall be appointed by the Governor for terms of office of six years and all vacancies occurring on the board shall

be filled by the Governor. When an appointment is made to fill a vacancy caused by death or resignation of a member, such appointment shall be for the remainder of the unexpired term of the member whose death or resignation caused the vacancy so filled.

(c) A majority of the members of the board may remove any member who misses three or more consecutive regular meetings of the board without a medical reason and may declare that position on the board to be vacant. A member so removed shall not be eligible for reappointment until the expiration of the term of office for which such person was serving. The Governor shall have the power to remove from office any member of the board for willful neglect of duty or for conviction of a crime involving moral turpitude.

(d) Those persons serving as members of the board immediately prior to April 11, 1990, shall continue to serve out the respective terms of office for which they were appointed and until their respective successors are appointed and qualified. (Code 1981, § 43-18-21, enacted by Ga. L. 1990, p. 1372, § 1.)

Code Commission notes. — Pursuant 1990,” was substituted for “the effective to Code Section 28-9-5, in 1990, “April 11, date of this article” in subsection (d).

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, § 4 et seq.

43-18-22. Election of president; meetings; reimbursement of members; conflict of interest.

(a) The board shall each year elect from its members a president whose term shall be one year and who shall serve during the period for which elected and until a successor shall be elected.

(b) The board shall meet at least once in each year and more often as the proper and efficient discharge of its duties may require.

(c) Each member of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.

(d) No board inspector shall own, operate, or be employed by any funeral establishment or crematory, or perform any services on behalf thereof without prior approval by the board and the division director. However, this shall not prohibit any board member from acting as an inspector as authorized in this article. (Code 1981, § 43-18-22, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 2000, p. 1706, § 19.)

OPINIONS OF THE ATTORNEY GENERAL

Inspectors holding office in private associations. — State Board of Funeral Service Inspectors appointed pursuant to O.C.G.A. Ch. 18, T. 43 are not prohibited by state law from holding appointed or elected office in private associations of

funeral service practitioners. However, serving as an officer in such private association could create an appearance of impropriety by competing loyalties which may be owed to the association and to the board. 1990 Op. Att'y Gen. No. 90-25.

43-18-23. Powers and duties; rules and regulations; seal.

For the purpose of better protection of life and health, preventing the spread of contagious, communicable, and infectious diseases, and regulating the practice of embalming and funeral directing and the care and disposition of dead human bodies, the board is authorized:

(1) To prescribe a standard of proficiency as to the qualifications and fitness of those engaged in and who may engage in the practice of embalming or funeral directing and the care and disposition of dead human bodies;

(2) To revoke the license of any embalmer or funeral director for incompetency, conviction of a crime involving moral turpitude, violation of this article, failure to observe the standards of proficiency or rules and regulations promulgated by the board, or any other cause as provided in this article;

(3) To fix and prescribe rules and regulations governing the business or profession of funeral directing and the business or profession of embalming;

(4) To fix and prescribe standards of sanitation to be observed in the embalming of dead human bodies or cremation of dead human bodies;

(5) To regulate and control the business or profession of funeral directing or embalming;

(6) To fix and prescribe minimum standards of general appearance of funeral establishments or crematories;

(7) To adopt a common seal; and

(8) To make and promulgate rules and regulations not inconsistent with the laws of this state for the regulation of such board and for the practice of embalming and funeral directing within this state. All rules and regulations of the board existing immediately prior to April 11, 1990, which are not inconsistent with this article shall continue in effect until repealed, amended, or otherwise changed by the board. (Code 1981, § 43-18-23, enacted by Ga. L. 1990, p. 1372, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, “April 11, 1990,” was substituted for “the effective date of this article” in the second sentence of paragraph (8).

Administrative rules and regula-

tions. — Rules for funeral service, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia State Board of Funeral Service, Chapter 250-1 et seq.

RESEARCH REFERENCES

ALR. — Disqualification, for bias or interest, of member of occupation or profession sitting in license revocation proceeding, 97 ALR2d 1210.

PART 3

LICENSES FOR FUNERAL DIRECTORS AND EMBALMERS

Administrative rules and regulations. — Establishment, crematory licensure and regulations, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Funeral Service, Chapter 250-6.

43-18-40. Application for license; examination.

Any person desiring to engage in the practice of embalming or in the business or practice of funeral directing and who has not been licensed to do so shall make written application to the board through the division director for such license. Such application shall be upon such form and shall be submitted in such manner as shall be prescribed by the board and the applicant shall pay such fee as may be fixed by the board. Before being issued a license to practice funeral directing or embalming in this state, all applicants shall pass an examination approved by the board which tests their qualifications and skill in either funeral directing or embalming, or both, as the case may be; and such examination shall be made in the manner provided for in this article and by the board through rules and regulations. (Code 1981, § 43-18-40, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 2000, p. 1706, § 19.)

43-18-41. Qualifications of embalmer or funeral director applicants.

(a) Each applicant for a license as either an embalmer or a funeral director shall:

- (1) Be at least 18 years of age;
- (2) Be of good moral character; and

(3) Have graduated from a high school or have earned a general education development certificate.

(b) In addition to the qualifications set out in subsection (a) of this Code section, an applicant for an embalmer's license shall:

(1) Have graduated from a program at an accredited college of funeral service or such other college as provided by board rule; and

(2) Have completed a minimum of 3,120 hours, pursuant to rules and regulations of the board, of service as an apprentice as provided in Code Sections 43-18-50 through 43-18-54.

(c) In addition to the qualifications set out in subsection (a) of this Code section, an applicant for a funeral director's license shall have, prior to the issuance of said license, a valid embalmer's license; shall furnish an affidavit which lists the names of the 50 funerals at which the apprentice assisted as provided in Code Section 43-18-50; and, effective January 1, 1991, must pass an examination approved by the board which tests knowledge of the law of this state relating to funeral directors.

(d) An individual who has met the educational requirement specified in paragraph (1) of subsection (b) of this Code section shall be eligible to take the section of the examination for embalmer relating directly to scholastic training without waiting until such individual meets the additional requirements for licensure specified in paragraph (2) of said subsection; provided, however, that such individual must submit a proper application and pay the required fees as determined by the board. An applicant for licensure as an embalmer who shall have successfully completed the section of the examination for embalmer relating directly to scholastic training shall have no status as an embalmer until such applicant meets all other requirements for licensure as outlined in this article and has received a license as an embalmer from the board. (Code 1981, § 43-18-41, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 1991, p. 94, § 43; Ga. L. 1992, p. 2762, § 2; Ga. L. 1998, p. 1322, § 1; Ga. L. 2010, p. 266, § 22/SB 195.)

The 2010 amendment, effective May 20, 2010, substituted "an examination" for "a written examination" near the end of subsection (c).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 84-809, have been included in the annotations for this Code section.

Rationale behind former Code 1933, § 84-809 (see **O.C.G.A. § 43-18-41**) was that unless a human body was properly embalmed and buried or cremated, the body may become a health hazard. *Smith v. Poteet*, 127 Ga. App. 735, 195 S.E.2d 213 (1972) (decided under former Code 1933, § 84-809).

Services involving handling of

corpses cannot be delegated or contracted to unlicensed individual. *Smith v. Poteet*, 127 Ga. App. 735, 195 S.E.2d 213 (1972) (decided under former Code 1933, § 84-809).

Distinction between delegable and nondelegable duties. — One must distinguish between portions of funeral director's work which are directly aligned with the director's statutory professional responsibility of embalming and burial and those responsibilities the director assumes because of social mores. The former is fixed by statute to avoid health hazards;

the latter is decreed by society because of culture and customs. Preparations made for relatives and friends to attend funeral services clearly fall under the latter category and no health hazard is involved. Therefore, an independent contractor may prepare a burial site including placement of artificial grass carpeting. *Smith v. Poteet*, 127 Ga. App. 735, 195 S.E.2d 213 (1972) (decided under former Code 1933, § 84-809).

Preparation of burial site can be delegated. — Work of independent contractor of preparing burial site, including placing artificial grass, chairs, and normal burial equipment, does not come within professional category such as embalming and corpse preparations which must be performed by individual professional licensee. *Smith v. Poteet*, 127 Ga. App. 735, 195 S.E.2d 213 (1972) (decided under former Code 1933, § 84-809).

RESEARCH REFERENCES

ALR. — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

43-18-42. Reciprocity; examination upon meeting qualifications.

(a) The board may, in its discretion and in accordance with regulations adopted by the board, grant to any person licensed in another state, territory, country, or District of Columbia full privileges to engage in equivalent practice authorized by this article without taking a national examination if:

(1)(A) On or after January 1, 1991, such person successfully passes an examination approved by the board which tests knowledge of the law of this state relating to funeral directors; and

(B) Such person satisfied in another state, territory, country, or District of Columbia the requirements for licensure which are:

(i) In effect in Georgia on the date of application; or

(ii) Substantially equal to the requirements for a similar license in Georgia; or

(2) Such person seeking a license pursuant to this Code section has engaged in the active practice of funeral service as a licensed funeral director and embalmer for three years immediately preceding his or her application for a license in Georgia.

(b) Nothing in this Code section shall be construed to prevent an applicant denied pursuant to this Code section from taking the examination for licensure pursuant to this article if that applicant otherwise meets the qualifications set out in Code Section 43-18-41. (Code 1981, § 43-18-42, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 2007, p. 552, § 1/HB 90; Ga. L. 2010, p. 266, § 23/SB 195.)

The 2010 amendment, effective May 20, 2010, substituted “an examination” for “a written examination” in the middle of subparagraph (a)(1)(A).

Cross references. — Cooperation between Georgia and other states generally, T. 28, C. 6.

43-18-43. Biennial renewal of licenses.

(a) Each license issued by the board shall expire biennially.

(b) If the licensee desires a renewal of such license, the board shall grant and issue the same without further examination upon application therefor and upon the payment of a renewal fee to be fixed by the board. (Code 1981, § 43-18-43, enacted by Ga. L. 1990, p. 1372, § 1.)

43-18-44. Display of renewal license, wall certificate, or apprentice registration in office or place of business.

Each person or establishment who receives a renewal license, wall certificate, or apprentice registration under this article shall display such renewal license, wall certificate, or apprentice registration in a conspicuous place in that person’s or establishment’s principal office or place of business. (Code 1981, § 43-18-44, enacted by Ga. L. 1990, p. 1372, § 1.)

43-18-45. Transferability of licenses.

All funeral director and embalmer licenses and apprentice registrations issued under this article shall apply only to the person receiving same and shall not be transferred or assigned. (Code 1981, § 43-18-45, enacted by Ga. L. 1990, p. 1372, § 1.)

43-18-46. Grounds for denial or revocation of license or registration; other discipline.

In addition to the authority provided in Code Section 43-1-19, the board may refuse to grant a license to operate a funeral establishment or to practice embalming or funeral directing, may refuse to grant a registration to serve as an apprentice, or may revoke, suspend, fine, or otherwise discipline a licensee or registrant upon any of the following grounds:

- (1) The employment of fraud or deception in applying for a license or registration or in passing the examination provided for in this article;
- (2) Issuance of a license or registration through error;
- (3) Conviction of a crime involving moral turpitude;

(4) The practice of embalming or funeral directing under a false name or the impersonation of another embalmer, funeral director, or apprentice of a like or different name;

(5) The making of a false statement or representation regarding the qualifications, training, or experience of any applicant;

(6) The making of a misrepresentation of any kind regarding any funeral merchandise;

(7) Directly or indirectly, by gifts or otherwise, committing the offense of buying business or paying a commission or making gifts, directly or indirectly, for the purpose of securing business to any physician or hospital, or to any institution where death occurs, or to any hospital superintendent, nurse, intern, or employee of any hospital, nursing home, or other institution where death occurs; or to any coroner or other government official;

(8) Gross or willful malpractice or gross neglect in the practice of embalming, funeral directing, or cremating;

(9) Signing a death certificate as having embalmed or prepared a body for burial or preservation when in fact someone else performed such embalming or preparation;

(10) Interfering, either directly or indirectly, with a licensed embalmer or funeral director having legal charge of a dead human body;

(11) Using any statements that mislead or deceive the public including, but not limited to, false or misleading statements regarding a legal or cemetery requirement, funeral merchandise, funeral services, or in the operation of a funeral establishment;

(12) Failing to fulfill the terms of a funeral service contract;

(13) Disregarding a decedent's dignity, right to privacy, or right to confidentiality unless compelled by law to do otherwise;

(14) Using profane, indecent, or obscene language in the presence of a dead human body, or within the immediate hearing of the family or relatives of a deceased, whose body has not yet been interred or otherwise disposed;

(15) Failing to turn assigned benefits in excess of charges incurred over to the assignee of the deceased within ten working days of receipt of the assigned funds;

(16) Refusing to surrender promptly the custody of a dead human body upon the express order of the person lawfully entitled to the custody;

(17) Failing to have the charges rendered to be in compliance with those listed in the funeral establishment general price list, the casket

price list, the outer burial container list, or the funeral service contract price list;

(18) Aiding or abetting an unlicensed person to practice under this article;

(19) Promoting or participating in a burial society, burial association, burial certificate plan, or burial membership plan;

(20) Soliciting, as defined in paragraph (21) of Code Section 43-18-1;

(21) Presenting a false certification of work done by an apprentice or as an apprentice;

(22) Willfully violating any state law or regulation; Federal Trade Commission law or regulation; Occupational Safety and Health Administration law or regulation; Department of Public Health law or regulation; Environmental Protection Agency law or regulation; or municipal or county ordinance or regulation that affects the handling, custody, care, or transportation of dead human bodies, including, but not limited to, the disposal of equipment, residual fluids, or medical wastes;

(23) Knowingly making any misleading, deceptive, untrue, or fraudulent representation in the practice of funeral directing or embalming or in any document connected therewith;

(24) Discriminating in the provision of services because of race, creed, color, religion, gender, or national origin;

(25) Failing to safeguard all personal properties that were obtained from dead human remains and failing to dispose of same as directed by a legally authorized person;

(26) Failing to refund moneys due as a result of overpayment by an insurance company or other third party;

(27) Engaging in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or registrant to practice in the funeral business, or is of a nature likely to jeopardize the interest of the general public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of funeral directing or embalming but shows that the person has committed any act or omission which is indicative of bad moral character or untrustworthiness; unprofessional conduct shall also include any departure from or failure to conform to the minimal reasonable standards of acceptable and prevailing practice of funeral services;

(28) Engaging in any practice whereby a person who is both a funeral director and a coroner or who is both a funeral director and a minister presents that person as a funeral director to a legally authorized person when death is imminent or after death occurs prior to when the legally authorized person selects a funeral director or funeral establishment which will handle the dead human body;

(29) Practicing embalming or funeral directing or operating a funeral establishment or crematory prior to the board's having approved an application for licensure; or

(30) Failing to satisfy the funeral director in full and continuous charge requirements as set out in Code Section 43-18-71 or funeral establishment requirements as set out in Code Section 43-18-70. (Code 1981, § 43-18-46, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 1991, p. 94, § 43; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Community Health" for "Department of Human Resources" in paragraph (22).

The 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" in paragraph (22).

43-18-47. Revocation hearing; service on licensee or applicant; revocation or restriction of license or registration.

(a) Upon the presentation before the board of any of the grounds enumerated in Code Section 43-18-46 or elsewhere in this article for revoking a license or registration, it shall be the duty of the board to cause written notice of the time and place of hearing upon the charge preferred, together with a copy of the charge, to be served upon the licensee or applicant for license, as the case may be, 20 days before the hearing.

(b) The board shall conduct such hearing in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(c) The board may, upon satisfactory proof that a licensee or registrant has been guilty of any of the offenses enumerated in Code Section 43-18-46 or elsewhere in this article revoke a license or registration or may limit or restrict a license or registration upon a majority vote of the board after a hearing thereon. (Code 1981, § 43-18-47, enacted by Ga. L. 1990, p. 1372, § 1.)

43-18-48. Refusal to grant license or registration.

The board may refuse to grant a license or registration. Refusal to grant a license or registration shall not be deemed to be a contested case under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Code 1981, § 43-18-48, enacted by Ga. L. 1990, p. 1372, § 1.)

43-18-49. Reinstatement of revoked license.

At any time after the final termination of the proceeding revoking a license, the board may, by a majority vote, issue a new license to a person affected restoring and conferring all the rights and privileges of and pertaining to the practice of embalming or funeral directing, as defined and regulated by this article. Any person desiring a new license shall be held to the same requirements as are persons who have not previously been licensed as such in this state. (Code 1981, § 43-18-49, enacted by Ga. L. 1990, p. 1372, § 1.)

43-18-50. Application for funeral service apprenticeship; period of apprenticeship.

(a) Every person desiring to serve as an apprentice shall make application as a funeral service apprentice to the board upon a form provided by the board. The applicant must be at least 18 years of age and have either graduated from high school or have a general educational development certificate. The apprenticeship shall be served at an approved establishment and under the direct supervision of a funeral director, embalmer, or both. The application must be verified by oath of applicant and be accompanied by a fee to be established by the board. The application shall be submitted to the board and may be accepted or rejected by a majority of the board.

(b) An apprenticeship shall be approved for a specific establishment and under a specific supervising funeral director, embalmer, or both. Any change in establishment or supervising funeral director, embalmer, or both shall terminate that apprenticeship and shall require submission of a new application.

(c) The total period of apprenticeship shall be 3,120 hours and must be served in a minimum of 18 months, but the minimum period shall be in addition to the time required to graduate from a college of funeral service or other college pursuant to paragraph (1) of subsection (b) of Code Section 43-18-41. (Code 1981, § 43-18-50, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 1994, p. 97, § 43; Ga. L. 1998, p. 1322, § 2.)

43-18-51. Renewal of registration of apprenticeship.

A registration of apprenticeship shall be renewable biennially upon payment of the renewal fee as provided by the board but shall not be renewed more than two times. Failure to renew a registration shall be the same as a revocation and such apprentice may be reregistered as provided in Code Section 43-18-54. The hours served after a registration has been revoked will not be carried forth into any subsequent apprenticeship period. (Code 1981, § 43-18-51, enacted by Ga. L. 1990,

p. 1372, § 1; Ga. L. 1991, p. 94, § 43; Ga. L. 1992, p. 2762, § 3; Ga. L. 1998, p. 1322, § 3.)

43-18-52. Supervision and control of apprentices; reporting hours served.

All apprentices shall be under the supervision and control of the board and shall upon application for licensure submit to the board proof of having served the required number of hours on forms provided by the board. After completing the 3,120 hours for apprenticeship within the specified period, they shall send the last report to the board regardless of the date. The information contained in the report shall be certified as correct by the funeral director in full and continuous charge and by the supervising funeral director and embalmer. (Code 1981, § 43-18-52, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 1998, p. 1322, § 3.)

43-18-53. Leaves of absence during apprenticeship.

(a) The board may grant leaves of absence for good cause, and grant extensions thereof to apprentices registered under the provisions of this article. However, no credit shall be given for the period during which the apprentice is on such leave, and no more than an aggregate of four years of such leave shall be granted to any person. Application for leave of absence and for extension thereof shall be made by the apprentice upon a form provided by the board.

(b) Upon the termination of a leave of absence or of any extension thereof, if the apprentice resumes the apprenticeship at the same establishment and under the same funeral director in full and continuous charge and under the same funeral director, embalmer, or both, the apprentice shall report to the board the fact of having so resumed the duties as an apprentice. Such notice must be certified to by each of the aforementioned funeral directors and embalmers. An apprentice who fails to provide such notice within 30 days after the end of the leave of absence may not enter those hours on the apprenticeship report form.

(c) Upon the termination of a leave of absence or of any extension thereof, if the apprentice seeks to serve at a different facility or under different personnel, a new application and fee must be submitted. (Code 1981, § 43-18-53, enacted by Ga. L. 1990, p. 1372, § 1.)

43-18-54. Refusal to grant apprenticeship registration; grounds for suspension, revocation, limitation of, or refusal to renew registration; reregistration.

(a) Refusal to grant an apprenticeship registration shall not be deemed to be a contested case under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(b) The board shall be authorized to suspend, revoke, limit, or refuse to renew a registration of apprenticeship, after notice and hearing pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," upon a finding by a majority of the board of any of the following:

(1) Engaging in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the apprentice to practice in the funeral business, or is of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of funeral directing or embalming but shows that the apprentice has committed any act or omission which is indicative of bad moral character or untrustworthiness; unprofessional conduct shall also include any departure from, or failure to conform to, the minimal reasonable standards of acceptable and prevailing practice of funeral services;

(2) Being on duty as an apprentice while under the influence of alcohol or illegal drugs;

(3) Being unable to practice with reasonable skill and safety to the public by reason of a physical or mental condition;

(4) Being convicted of a felony or of any crime involving moral turpitude in the courts of this state or any other state, territory, or country, or in the courts of the United States, regardless of whether first offender treatment without an adjudication of guilt was given or whether an adjudication of guilty or sentence was otherwise withheld or not entered on the charge. As used in this paragraph, the term "conviction" shall include a finding or verdict of guilt or plea of guilty or probation relating to first time offenders; and "felony" shall include any offense which, if committed in this state, would be deemed a felony;

(5) Disobeying proper orders or instructions of that apprentice's supervising embalmer, funeral director, or both;

(6) Violating any provision of this article or rule or regulation of the board made pursuant to this article; or

(7) Practicing fraud or misrepresentation in obtaining a certificate of registration as an apprentice or knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of funeral service or on any document connected therewith while registered as an apprentice.

(c) An apprentice who has failed to renew that person's registration or who has had that person's registration suspended or revoked may,

within one year after such expiration, suspension, or revocation, make application for registration but no more than two such applications may be approved by the board. An applicant for reregistration whose previous apprenticeship was revoked for failure to renew may be granted full credit for the time previously served prior to expiration. An applicant for reregistration whose previous apprenticeship was suspended or revoked upon any of the grounds set forth in subsection (b) of this Code section, however, may be granted credit for no more than 75 percent of the time previously served prior to the disciplinary action. In all other cases regarding applicants for reregistration, the board may, when the circumstances warrant, allow an apprentice credit under a reregistration for time actually served under a previous registration. (Code 1981, § 43-18-54, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 1992, p. 2762, § 4.)

43-18-55. Continuing education requirements for embalmers.

(a) The board shall be authorized to require persons seeking renewal of an embalmer's license under this chapter to complete board approved continuing education of not less than ten hours biennially. The board shall be authorized to approve courses offered by institutions of higher learning, specialty societies, or professional organizations or by others the board deems appropriate.

(b) The board shall be authorized to waive the continuing education requirement in cases of hardship, disability, illness, or under other such circumstances as the board deems appropriate.

(c) The continuing education requirement pursuant to this Code section shall be waived for persons who hold an inactive license or for licensed individuals over the age of 65.

(d) An embalmer who is also a licensed funeral director and who completes the continuing education requirements for funeral directors pursuant to Code Section 43-18-56 shall not be required to complete additional continuing education requirements pursuant to this Code section.

(e) The board shall be authorized to promulgate rules and regulations to implement and ensure compliance with the requirements of this Code section.

(f) This Code section shall apply to each licensing renewal cycle which begins after the 1996 renewal. (Code 1981, § 43-18-55, enacted by Ga. L. 1995, p. 853, § 1; Ga. L. 1996, p. 6, § 43.)

43-18-56. Continuing education requirements for funeral directors.

(a) The board shall be authorized to require persons seeking renewal of a funeral director's license under this chapter to complete board

approved continuing education of not less than ten hours biennially. The board shall be authorized to approve courses offered by institutions of higher learning, specialty societies, or professional organizations or by others the board deems appropriate.

(b) The board shall be authorized to waive the continuing education requirement in cases of hardship, disability, illness, or under other such circumstances as the board deems appropriate.

(c) The continuing education requirement pursuant to this Code section shall be waived for persons who hold an inactive license or for licensed individuals over the age of 65.

(d) A funeral director who is also a licensed embalmer and who completes the continuing education requirements established for embalmers pursuant to Code Section 43-18-55 shall not be required to complete additional continuing education requirements pursuant to this Code section.

(e) The board shall be authorized to promulgate rules and regulations to implement and ensure compliance with the requirements of this Code section.

(f) This Code section shall apply to each licensing renewal cycle which begins after the 1996 renewal. (Code 1981, § 43-18-56, enacted by Ga. L. 1995, p. 853, § 1; Ga. L. 1996, p. 6, § 43.)

PART 4

OPERATION OF FUNERAL ESTABLISHMENTS AND CREMATORIES

Administrative rules and regulations. — Establishment, crematory licensure and regulations, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Funeral Service, Chapter 250-6.

43-18-70. Practice at licensed funeral establishment or crematory; facilities; living quarters.

(a) No embalmer or funeral director shall engage in the practice of embalming or funeral directing at a funeral establishment or crematory which is not licensed by the board.

(b) A funeral establishment must be at a specified street address or location and must have the following minimum facilities and equipment:

(1) A room with adequate seating for a minimum of 30 people in which funeral services may be conducted;

(2) A preparation room equipped with a nonporous, sanitary floor and walls, and necessary drainage and ventilation and containing

necessary instruments and supplies for the preparation and embalming of dead human bodies;

(3) A display room containing actual caskets or models, mock-ups, or sections of caskets or similar items if all such caskets are available and in stock for purchase at the establishment or can be delivered within 24 hours. Each funeral establishment shall maintain on the premises at each of its locations an adequate stock of funeral caskets which shall not be less than eight and which shall meet such other criteria as necessary to protect the public;

(4) At least one operable motor hearse which is either owned or leased by the establishment and which has a current Georgia registration; and

(5) At least one church truck.

(c) The board may adopt and enforce such rules as may be reasonable and proper to define such necessary drainage, ventilation, and sanitary flooring and walls and necessary and suitable instruments, supplies, and merchandise in a funeral establishment.

(d) If the funeral director resides in the funeral establishment to be accessible to the community for purposes of satisfying the requirements of funeral director in full and continuous charge, the living quarters in the funeral establishment must include at a minimum furnished sleeping quarters, cooking, refrigerating, and bathing facilities. (Code 1981, § 43-18-70, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 2007, p. 552, § 2/HB 90.)

Editor's notes. — Ga. L. 1990, p. 1372, § 2, not codified by the General Assembly, provides that: "nothing in this Act shall prohibit any funeral home director to conduct business outside of his or her county of residence."

43-18-71. Funeral establishments and crematories to be licensed and to employ licensed funeral director; display of name and license of funeral director.

(a) It shall be unlawful for any person, firm, corporation, or association to operate a funeral establishment or crematory engaged in the business of funeral directing or embalming or cremating without first obtaining a license from the board in accordance with this article. The board shall not issue a license to any funeral establishment or crematory unless such funeral establishment or crematory shall employ the service of a funeral director licensed in accordance with this article, who shall be in full and continuous charge of the establishment and who is a resident of this state. There shall be conspicuously displayed in each funeral establishment and crematory the name and license of the funeral director in full and continuous charge. A funeral director who is in full and continuous charge shall:

(1) Assume full responsibility for the supervision and operation of the funeral establishment for which that person has been designated as funeral director;

(2) Act as funeral director for only one funeral establishment; and

(3) Spend a minimum of 40 hours per week in the employ and operation of the establishment and be accessible and available to the community.

(b) When there is a change in the funeral director in full and continuous charge, such change shall be reported to the board in writing within five days of the effective date of such change. The board may request the new funeral director in full and continuous charge and owner to appear before the board to determine if the requirements for a funeral director in full and continuous charge have been met. (Code 1981, § 43-18-71, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 1992, p. 2762, § 5.)

OPINIONS OF THE ATTORNEY GENERAL

<p>Trade name of funeral home need not contain surname of person licensed to conduct business; name of</p>	<p>licensed person must be conspicuously displayed in the establishment. 1965-66 Op. Att'y Gen. No. 65-105.</p>
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RESEARCH REFERENCES

ALR. — Right of one who acquires title to, or other interest in, real property to benefit of a license previously issued by the public, permitting use of property for a specified purpose, 131 ALR 1339.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

43-18-72. Crematories to be licensed; equipment, facilities, and personnel; application; reports; limitation of single body in retort.

(a)(1) It shall be unlawful for any person, firm, corporation, or association to operate a crematory without first obtaining a separate license for such purpose from the board in accordance with this article. The crematory must be at a specific address or location and must meet the following requirements and have the following minimum equipment, facilities, and personnel:

(A) A room with seating for a minimum of 30 people in which funeral services may be conducted;

(B) A display room containing an adequate supply of urns;

(C) Rolling stock consisting of at least one operable motor hearse either owned or leased by said firm with current Georgia registration;

(D) At least one operable retort for cremation;

(E) At least one operable processing station for grinding of cremated remains;

(F) At least one church truck; and

(G) Not be located within 1,000 feet of a residential subdivision platted and recorded in the office of the clerk of the superior court of a county in which such residential subdivision is located.

(2)(A) The provisions of subparagraphs (A), (B), and (F) of paragraph (1) of this subsection shall not apply to crematories which provide cremation services only to other funeral establishments.

(B) The provision of paragraph (G) of paragraph (1) of this subsection shall only apply to the issuance or renewal of any license on or after July 1, 2009, for any stand-alone crematory that was not in operation as of July 1, 2009. For purposes of this subparagraph, the term "stand-alone crematory" shall mean a crematory that is not located on or adjacent to a tract or parcel of land which contains a funeral establishment.

(b) The board may adopt and enforce such rules as may be reasonable and necessary to provide for the sanitary disposal of dead human bodies and prevent the spread of disease and to protect the health, safety, and welfare of the people of this state.

(c) Application for licensure of a crematory shall be made upon a form approved by the board and shall be accompanied by an application fee. No license shall be issued unless the facility meets all the requirements set forth by the board.

(d) The board shall adopt rules requiring each crematory to submit periodic reports to the board in a standard form which include the names of persons cremated and the types of containers used.

(e) No more than one dead human body shall be placed in a retort at one time unless written permission has been received from the person possessing legal responsibility for the disposition of the dead human body.

(f) Nothing in this article shall require a funeral establishment for which a valid license to operate is in effect on May 9, 2002, to have a separate license for a crematory until on and after the renewal date of such license to operate a funeral establishment which first occurs after May 9, 2002, but such establishment must comply with all the minimum equipment and facilities requirements and all other statutes, rules, and regulations relating to crematories. (Code 1981, § 43-18-72, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 1992, p. 2762, § 5A; Ga. L.

1998, p. 1322, § 4; Ga. L. 2002, p. 641, § 5; Ga. L. 2009, p. 292, § 2/HB 68.)

The 2009 amendment, effective July 1, 2009, rewrote subsection (a).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, “May 9, 2002” was substituted for “the effective date of this subsection” twice in subsection (f).

Pursuant to Code Section 28-9-5, in 2009, “after July 1, 2009, for any

stand-alone crematory that was not in operation as of July 1, 2009” was substituted for “after the effective date of this subparagraph for any stand-alone crematory that was not in operation as of such effective date” in subparagraph (a)(2)(B).

Law reviews. — For note on the 2002 amendment of this Code section, see 19 Georgia St. U.L. Rev. 200 (2002).

43-18-73. Renewal of licenses for the operation of funeral establishments and crematories; changes in ownership.

(a) Licenses for the operation of funeral establishments and of crematories shall expire biennially unless the owner or proprietor of a licensed funeral establishment or crematory applies to the board to renew the license prior to its expiration. The application shall show the name of the funeral establishment or crematory; the names and addresses of all owners or, if the owner is a corporation, the names and addresses of all officers and directors of the corporation; and the names of all licensed embalmers and funeral directors who own or are employed by such funeral establishment or crematory or are otherwise connected therewith, together with the date of issue and the number of the license of each registered embalmer and funeral director as required. If the renewal fee prescribed by the board has been paid and the funeral establishment or crematory meets the other requirements of this article, the board shall issue a license; otherwise it shall be unlawful for any funeral establishment or crematory to operate in this state. Nothing in this Code section shall be construed to require a crematory to employ an embalmer in order to be licensed.

(b) Whenever there is a change in ownership of a funeral establishment or crematory, the board shall be notified within 15 days prior to the proposed change upon a form provided by the board. (Code 1981, § 43-18-73, enacted by Ga. L. 1990, p. 1372, § 1.)

43-18-74. Transferability of licenses.

Licenses for funeral establishments or crematories shall be issued to such enterprises at their location at the time of issuance. Such license shall not be transferable to another location. (Code 1981, § 43-18-74, enacted by Ga. L. 1990, p. 1372, § 1.)

43-18-75. Inspections; suspension or revocation of license; other disciplinary actions.

(a) The board shall provide for inspections from time to time, but not less frequently than annually, of the premises of funeral establishments and crematories for purposes of ensuring compliance with the provisions of this article and any rules or regulations issued pursuant thereto, and every such firm shall submit to such inspections. The board is authorized to contract with any one or more county boards of health, and each county board of health is authorized to contract with the board, for the provision of inspection services on behalf of the board for purposes of this subsection.

(b) The license of any funeral establishment or crematory may be suspended, revoked, or put on probation, or fines may be imposed by the board if the evidence produced before it indicates that the establishment or crematory has violated any of the provisions of this article or any rules or regulations issued pursuant thereto. The board shall comply with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," in relation to such hearing; and the licensee shall have the right to appeal any decision of the board in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Code 1981, § 43-18-75, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 2002, p. 641, § 6.)

Law reviews. — For note on the 2002 amendment of this Code section, see 19 Georgia St. U.L. Rev. 200 (2002).

43-18-76. Fine schedule for violation of minimum standards.

The board may establish a fine schedule for violation of minimum standards which the board determines to be a threat to the health, safety, or welfare of the public. A determination of such a violation shall not be deemed to be a contested case under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Code 1981, § 43-18-76, enacted by Ga. L. 1990, p. 1372, § 1.)

43-18-77. Funeral establishment or crematory temporarily without services of funeral director.

In the event that a funeral establishment or crematory is temporarily without the services of a funeral director in full and continuous charge, upon notice by the funeral establishment or crematory to the board within five days following the last day of service by such funeral director, the board shall grant the funeral establishment or crematory a 90 day grace period in which to have a funeral director in full and continuous charge approved by the board before any action may be

taken by the board to revoke or terminate the establishment's or crematory's license. The board may, in its discretion, upon application by the funeral establishment or crematory, grant one additional 90 day grace period upon showing of good cause. Grace periods totaling not more than 180 days may be granted during any two-year period beginning the first day on which the grace period was granted. Failure to have a funeral director in full and continuous charge shall be grounds for the revocation or suspension of any license, after notice and hearing. (Code 1981, § 43-18-77, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 2002, p. 415, § 43.)

43-18-78. Temporary destruction of licensed funeral establishment or crematory; use of temporary location during grace period.

In the event any funeral establishment or crematory is temporarily destroyed by fire, flood, or other natural catastrophe, upon notice by the funeral establishment or crematory to the board within five days following the destruction, the board may grant the funeral establishment or crematory a 90 day grace period to use a board approved temporary location while reconstructing the previous location, provided the funeral establishment or crematory complies with all other provisions of this article and the rules of the board. The board may, in its discretion, upon application by the funeral establishment or crematory, grant additional 90 day grace periods upon showing of good cause. (Code 1981, § 43-18-78, enacted by Ga. L. 1990, p. 1372, § 1.)

43-18-79. Death of license holder.

No funeral establishment license shall terminate upon the death of the holder thereof but shall pass to the legal representative of the deceased or, if there is no legal representative, to the widow of the deceased who may continue to operate the establishment for the unexpired time of the license. (Code 1981, § 43-18-79, enacted by Ga. L. 1992, p. 2762, § 6.)

43-18-80. Authorizing agent; statement specifying disposition of cremated remains; shipment of remains.

(a) For the purposes of this Code section, "authorizing agent" means a person legally entitled to authorize the cremation of human remains.

(b) The authorizing agent shall provide to the funeral establishment in which the cremation arrangements are made a signed statement specifying the ultimate disposition of the cremated remains, if known. A copy of this statement shall be retained by the funeral establishment offering or conducting the cremation.

(c) Cremated remains shall be shipped only by a method that has an internal tracking system available and that provides a receipt signed by the person accepting delivery.

(d) The authorizing agent shall be responsible for the disposition of the cremated remains. If, after 60 days from the date of cremation, the authorizing agent or his or her representative has not specified the ultimate disposition or claimed the cremated remains, the funeral establishment or entity in possession of the cremated remains shall send a notification to the authorizing agent notifying him or her that, pursuant to this subsection, failure to respond to such notification and specify the final disposition of the cremains within 30 days of the transmission of such notice shall authorize the funeral establishment to make arrangements for the disposition of the cremains. If, after 30 days, the funeral establishment or entity in possession of the cremated remains has not received instructions from the authorizing agent describing a specific method of disposing of the cremains, the funeral establishment or entity in possession of the cremains shall be authorized to dispose of the cremated remains in a dignified and humane manner by entombing such cremains in a crypt or underground in accordance with local and state law or by storage in the funeral establishment. The final resting place of the cremains shall be clearly marked and recorded by the funeral establishment entombing the cremains. Any costs or fees incurred to entomb, inter, or disinter the cremains shall be the responsibility of the authorizing agent; provided, however, that such cost shall not exceed \$100.00. (Code 1981, § 43-18-80, enacted by Ga. L. 2009, p. 292, § 3/HB 68.)

Effective date. — This Code section became effective July 1, 2009.

ARTICLE 2

CONTRACTS FOR PRENEED FUNERAL SERVICES

43-18-90 through 43-18-108.

Reserved. Repealed by Ga. L. 2000, p. 882, § 4, effective July 1, 2000.

Editor's notes. — Ga. L. 2000, p. 882, § 4, effective July 1, 2000, repealed and reserved this article. The former article, relating to contracts for preneed funeral services, consisted of Code Sections 43-18-90 through 43-18-108 and was

based on Ga. L. 1966, p. 398, §§ 1-16; Ga. L. 1974, p. 275, §§ 2-8; Ga. L. 1982, p. 3, § 43; Ga. L. 1986, p. 855, §§ 14-22; Ga. L. 1991, p. 94, § 43; Ga. L. 1993, p. 123, § 39; Ga. L. 1994, p. 97, § 43.

CHAPTER 19

GEOLOGISTS

Sec.		Sec.	
43-19-1.	Short title.	43-19-16.	Denial, suspension, or revocation of certificate; appeal.
43-19-2.	Purpose of chapter.	43-19-17.	Reissuance of certificates [Repealed].
43-19-3.	Definitions.	43-19-18.	Certification in a specialty.
43-19-4.	Creation of board; members.	43-19-19.	Seals.
43-19-5.	Board meetings; officers.	43-19-20.	Requirement that state and subdivisions contract only with registered geologists.
43-19-6.	General powers and duties of board.	43-19-21.	Subpoena [Repealed].
43-19-7.	Service of appeals, documents, and legal process on division director.	43-19-22.	Attorney General as legal adviser.
43-19-8.	(Repealed effective January 1, 2013) Official records and affidavits as evidence.	43-19-23.	Filing of complaints [Repealed].
43-19-9.	Code of professional conduct [Repealed].	43-19-24.	Exceptions to operation of chapter.
43-19-10.	Registration required.	43-19-25.	Partnership, limited liability, and corporate practice; nonpublic geological services; practice by nonresident or new resident.
43-19-11.	Application.	43-19-26.	Unlawful acts.
43-19-12.	Qualifications of applicants.	43-19-27.	Penalty.
43-19-13.	Examinations.	43-19-28.	Termination [Repealed].
43-19-14.	Reciprocity.		
43-19-15.	Issuance of certificates of registration; renewal or replacement.		

Administrative rules and regulations. — Administration, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Registration for Professional Geologists, Chapter 265-1.

Standards of conduct, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Registration for Professional Geologists, Chapter 265-8.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative

Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

ALR. — Failure to procure occupational

43-19-1. Short title.

This chapter shall be known and may be cited as the “Registration of Geologists Act of 1975.” (Code 1933, § 84-2101A, enacted by Ga. L. 1975, p. 163, § 1.)

43-19-2. Purpose of chapter.

In order to safeguard life, health, and property and to promote the public welfare, the practice of geology in this state is declared to be subject to regulation in the public interest. This chapter is intended to introduce qualifying criteria into a previously unregulated professional field. Such action recommends itself through benefits to the safety, health, and property of the people of this state and to the promotion of the public welfare. These benefits are in the fields of geology as related to engineering, ground water, mineral exploration and development, geologic hazards, the further development of the science of geology, and other geologic matters of concern to the people of the state. (Code 1933, § 84-2102A, enacted by Ga. L. 1975, p. 163, § 1.)

43-19-3. Definitions.

As used in this chapter, the term:

(1) “Board” means the State Board of Registration for Professional Geologists.

(2) “Geologist” means a person engaged in the practice of geology.

(3) “Geology” means that science which treats of the earth in general; investigation of the earth’s crust and the rocks and other materials which compose it; and the applied science of utilizing knowledge of the earth and its constituent rocks, minerals, liquids, gases, and other materials for the benefit of mankind.

(4) “Public practice of geology” means the performance of geological service or work such as consultation, investigation, surveys, evaluation, planning, mapping, and inspection of geological work in which the performance is related to public welfare or safeguarding of life, health, property, and the environment, except as specifically exempted by this chapter. A person shall be construed to practice publicly or offer to practice publicly geology, within the meaning and intent of this chapter, who practices any branch of the profession of geology; or who by verbal claim, sign, advertisement, letterhead,

card, or in any other way represents himself to be a geologist; or through the use of some other title implies that he is a geologist; or that he is registered under this chapter; or who holds himself out as able to perform or who does perform any geological services or work recognized as geology.

(5) "Qualified geologist" means a person who is not registered under this chapter but who possesses all the qualifications specified in this chapter for registration.

(6) "Registered certified specialty geologist" means a person who is certified as a specialty geologist under this chapter.

(7) "Registered geologist" means a person who is registered as a geologist under this chapter.

(8) "Responsible charge of work" means the independent control and direction, by the use of initiative, skill, and independent judgment, of geological work or the supervision of such work.

(9) "Subordinate" means any person who assists a registered geologist or a registered engineer in the practice of geology without assuming the responsible charge of work. (Code 1933, § 84-2103A, enacted by Ga. L. 1975, p. 163, § 1.)

43-19-4. Creation of board; members.

(a) A State Board of Registration for Professional Geologists is created, whose duty it shall be to administer this chapter. The board shall be comprised of:

(1) Five members who shall be geologists registered under this chapter, one of whom shall be an academic geologist, one a governmental geologist, one a salaried company geologist, one an independent or consultant geologist, and one a geologist at large;

(2) A sixth member who shall be appointed from the public at large and who shall have no connection whatsoever with the practice of professional geology; and

(3) The commissioner of natural resources, or his designated agent, as a permanent ex officio member.

(b) The members of the board mentioned in paragraphs (1) and (2) of subsection (a) of this Code section shall be appointed by the Governor, approved by the Secretary of State, and confirmed by the Senate.

(c) Each member of the board shall be a citizen of the United States and a resident of the State of Georgia.

(d) The members of the board provided for in paragraphs (1) and (2) of subsection (a) of this Code section shall be appointed by the Governor

for terms of five years and until their successors are appointed and qualified. The members of the board holding office on June 30, 1987, shall serve until the expiration of the term for which they were appointed and until their successors have been appointed and qualified. On the expiration of the term of any member, the member's successor shall be appointed in like manner by the Governor for a term of five years.

(e) No person shall serve as a member of the board for more than one consecutive five-year term.

(f) The Governor may remove any member of the board pursuant to the authority of Code Section 43-1-17. Vacancies in the membership of the board shall be filled for the unexpired term by appointment by the Governor as provided for in this chapter.

(g) The members of the board shall, before entering upon the discharge of their duty, subscribe to and file with the Secretary of State the constitutional oath of officers, whereupon the Secretary of State shall issue to each appointee a certificate of appointment.

(h) Each member of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2. (Code 1933, § 84-2514A, enacted by Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2114A, as redesignated by Ga. L. 1976, p. 695, § 1; Code 1933, § 84-2114A.1, enacted by Ga. L. 1980, p. 50, § 1; Ga. L. 1987, p. 603, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1987, “permanent” was substituted for “permanent” in paragraph (a)(3).

43-19-5. Board meetings; officers.

(a) The board shall hold such meetings as may be necessary for it to carry out its duties under this chapter. An affirmative vote of a majority of the members present shall be necessary to transact business.

(b) The board shall annually elect a chairman and a vice-chairman. The division director shall be the secretary of the board and, in addition to his duties as prescribed by law, shall perform such other administrative duties as may be prescribed by the board. (Code 1933, § 84-2515A, enacted by Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2115A, as redesignated by Ga. L. 1976, p. 695, § 1; Ga. L. 1987, p. 603, § 2; Ga. L. 2000, p. 1706, § 19.)

43-19-6. General powers and duties of board.

In addition to other powers and duties specified in this chapter, the board shall:

(1) Adopt and amend rules and regulations which may be reasonably necessary for this chapter and the regulation of proceedings

before the board. The board and all of its rules, regulations, and procedures are subject to and shall comply with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act";

(2) Adopt and have an official seal;

(3) Issue, renew, and reinstate the certificates of duly qualified persons;

(4) Initiate investigations for the purpose of discovering violations of this chapter;

(5) Conduct hearings upon charges calling for the discipline of a licensee or on violations of this chapter;

(6) Adopt a code of professional conduct; and

(7) Have such other powers and duties as are necessary to effectuate this chapter. (Code 1933, § 84-2517A, enacted by Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2117A, as redesignated by Ga. L. 1976, p. 695, § 1; Ga. L. 1987, p. 603, § 3.)

Administrative rules and regulations. — Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia State Board of Registration for Professional Geologists, Chapter 265-1 et seq.

43-19-7. Service of appeals, documents, and legal process on division director.

All appeals from a decision of the board, all documents or applications required by law to be filed with the board, and any notice or legal process to be served upon the board shall be filed with or served upon the division director at his or her office. (Code 1933, § 84-2516A, enacted by Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2116A, as redesignated by Ga. L. 1976, p. 695, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2008, p. 1112, § 14/HB 1055.)

43-19-8. (Repealed effective January 1, 2013) Official records and affidavits as evidence.

All official records of the board, or affidavits by the division director as to the content of such records, shall be prima-facie evidence of all matters required to be kept therein. (Code 1933, § 84-2518A, enacted by Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2118A, as redesignated by Ga. L. 1976, p. 695, § 1; Ga. L. 1987, p. 603, § 4; Ga. L. 2000, p. 1706, § 19.)

Editor's notes. — Ga. L. 2011, p. 99, § 68 provides for the repeal and reservation of this Code section effective January 1, 2013.

Ga. L. 2011, p. 99, § 68, which repealed and reserved this Code section, purported to repeal and reserve Code Section

43-18-8 but actually repealed and reserved Code Section 43-19-8.

43-19-9. Code of professional conduct.

Reserved. Repealed by Ga. L. 1987, p. 603, § 5, effective June 30, 1987.

Editor's notes. — This Code section was based on Ga. L. 1975, p. 163, § 1; Ga. L. 1976, p. 695, § 1.

43-19-10. Registration required.

It shall be unlawful for any person to practice publicly or offer to practice publicly geology in this state, as defined in this chapter, or to use in connection with his name or otherwise assume or advertise any title or description tending to convey the impression that he is a registered geologist unless such person has been duly registered or exempted under this chapter. The right to engage in the practice of geology shall be deemed a personal right, based on the qualifications of the individual as evidenced by his certificate of registration, and shall not be transferable. (Code 1933, § 84-2104A, enacted by Ga. L. 1975, p. 163, § 1.)

Cross references. — False or fraudulent advertising, § 10-1-420 et seq.

RESEARCH REFERENCES

ALR. — Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

43-19-11. Application.

An application for registration as a geologist or certification in a specialty shall be made under oath and shall show the applicant's education and a detailed summary of his geologic work. The application shall be accompanied by an application fee fixed by the board. (Code 1933, § 84-2507A, enacted by Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2107A, as redesignated by Ga. L. 1976, p. 695, § 1; Ga. L. 1977, p. 746, § 1; Ga. L. 1987, p. 603, § 6.)

43-19-12. Qualifications of applicants.

To be eligible for a certificate of registration, an applicant shall meet each of the following minimum qualifications:

(1) Be of good ethical character;

(2) Have graduated from an accredited college or university which has been approved by the board with a major in either geology, engineering geology, or geological engineering; or have completed 45 quarter hours or the equivalent in geological science courses leading to a major in geology, of which at least 36 quarter hours or the equivalent were taken in the third or fourth year or in graduate courses;

(3) Have at least seven years of professional geological work which shall include a minimum of three years of professional geological work under the supervision of a registered geologist, a registered civil engineer, or other supervision acceptable to the board. The following criteria of education and experience qualify, as specified, toward accumulation of the required seven years of professional geological work:

(A) Each year of undergraduate study in the geological sciences shall count as one-half year of training up to a maximum of two years, and each year of graduate study shall count as a year of training;

(B) Credit for undergraduate study, graduate study, and graduate courses, individually or in any combination thereof, shall in no case exceed a total of four years toward meeting the requirements for at least seven years of professional geological work as set forth above;

(C) The board may consider, in lieu of the above professional geological work as set out in this paragraph, the cumulative total of professional geological work or geological research of persons teaching at the college or university level, provided that such work or research can be demonstrated to be of a sufficiently responsible nature to be equivalent to the professional requirements required; and

(D) The ability of the applicant shall have been demonstrated by his having performed the work in a responsible position as determined by the board. The adequacy of the required supervision and experience shall be determined by the board in accordance with standards set forth in regulations adopted by it; and

(4) Successfully pass such examinations as are established by the board and which are designed to demonstrate that the applicant has the necessary knowledge and skill to exercise the responsibilities of the public practice of geology. (Code 1933, § 84-2508A, enacted by Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2108A, as redesignated by Ga. L. 1976, p. 695, § 1; Ga. L. 1976, p. 695, § 3; Ga. L. 1987, p. 603, § 7; Ga. L. 1991, p. 1130, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, “and” was added at the end of subparagraph (3)(C).

RESEARCH REFERENCES

ALR. — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

43-19-13. Examinations.

(a) Examinations shall be held at least annually.

(b) The board shall approve the scope, form, and content of the examinations required for licensure under this chapter. (Code 1933, § 84-2510A, enacted by Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2110A, as redesignated by Ga. L. 1976, p. 695, § 1; Ga. L. 2010, p. 266, § 24/SB 195.)

The 2010 amendment, effective May 20, 2010, in subsection (b), substituted “The board shall approve” for “The board shall determine the fee for and” at the beginning and substituted “required for licensure” for “provided for” near the end.

43-19-14. Reciprocity.

A person holding a certificate of registration to engage in the practice of geology, on the basis of comparable licensing requirements issued to him by a proper authority of a state, territory or possession of the United States, or the District of Columbia, and who, in the opinion of the board, otherwise meets the requirements of this chapter based on verified evidence may be registered, upon application, without further examination. (Code 1933, § 84-2511A, enacted by Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2111A, as redesignated by Ga. L. 1976, p. 695, § 1.)

Cross references. — Cooperation between Georgia and other states generally, T. 28, C. 6.

43-19-15. Issuance of certificates of registration; renewal or replacement.

(a) The board shall issue a certificate of registration, upon payment of the registration fee as fixed by the board, to any applicant who, in the opinion of the board, has satisfactorily met all the requirements of this chapter. The issuance of a certificate of registration by the board shall be prima-facie evidence that the person named therein is entitled to all the rights and privileges of a registered geologist while the certificate remains unrevoked or unexpired.

(b) All certificates shall be renewable biennially at such time as may be designated by the division director. All applications for renewal shall be filed with the division director prior to the expiration date, accompanied by the renewal fee prescribed by the board. A license which has expired for failure to renew may only be restored after application and payment of the prescribed restoration fee.

(c) A new certificate of registration to replace any certificate lost, destroyed, or mutilated may be issued subject to the rules of the board and payment of a fee set by the board. (Code 1933, § 84-2512A, enacted by Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2112A, as redesignated by Ga. L. 1976, p. 695, § 1; Ga. L. 1976, p. 696, § 6; Ga. L. 1987, p. 603, § 8; Ga. L. 2000, p. 1706, § 19.)

43-19-16. Denial, suspension, or revocation of certificate; appeal.

(a) The board shall have the authority to refuse to grant a certificate to an applicant therefor or to revoke or suspend the certificate of a person registered by the board or to discipline a person registered by the board as provided in Code Section 43-1-19.

(b) The action by the board in granting or refusing to grant or renew a certificate under this chapter or in revoking or suspending or in refusing to revoke or suspend such a certificate may be appealed in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," to the superior court of the county of domicile of the board; provided that, if the findings of the board are supported by any evidence, such findings shall be accepted by the court. (Code 1933, § 84-2522A, enacted by Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2122A, as redesignated by Ga. L. 1976, p. 695, § 1; Ga. L. 1987, p. 603, § 9; Ga. L. 2000, p. 1706, § 11.)

43-19-17. Reissuance of certificates.

Reserved. Repealed by Ga. L. 1987, p. 603, § 10, effective June 30, 1987.

Editor's notes. — This Code section was based on Ga. L. 1975, p. 163, § 1; Ga. L. 1976, p. 695, § 1.

43-19-18. Certification in a specialty.

(a) In addition to registering as a geologist, qualified persons may also be eligible for certification in a specialty. Such specialties may be created by the board by regulation, with such regulations to contain any required additional qualifications. Only a registered geologist is eligible

for certification in a specialty. Application may be submitted for both registration as a geologist and certification in a specialty at the same time, but the applicant must be approved for registration as a geologist before being considered for certification in a specialty. The certification in a specialty is dependent, in every case, upon the approval of registration as a geologist.

(b) An applicant for certification in a specialty shall meet all of the requirements of a registered geologist and such special requirements as the board may establish by regulation. (Code 1933, § 84-2509A, enacted by Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2109A, as redesignated by Ga. L. 1976, p. 695, § 1; Ga. L. 1976, p. 695, §§ 4, 5; Ga. L. 1987, p. 603, § 11; Ga. L. 1991, p. 1130, § 2.)

43-19-19. Seals.

Each registrant under this chapter, upon issuance of a certificate of registration, may use a seal of such design as is authorized by the board, bearing the registrant's name and the legend "Registered Professional Geologist" or "Certified (subspecialty) Geologist." All drawings, reports, or other geologic papers or documents involving the practice of geology, as defined in this chapter, which shall have been prepared or approved by a registered geologist or a subordinate employee under his direction for the use of or for delivery to any person or for public record within this state shall be signed by him and impressed with the seal provided for in this Code section or the seal of a nonresident practicing under this chapter, either of which shall indicate his responsibility for them. (Code 1933, § 84-2513A, enacted by Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2113A, as redesignated by Ga. L. 1976, p. 695, § 1; Ga. L. 1977, p. 746, § 2; Ga. L. 1991, p. 1130, § 3.)

RESEARCH REFERENCES

C.J.S. — 78A C.J.S., Seals, § 2.

43-19-20. Requirement that state and subdivisions contract only with registered geologists.

This state and its political subdivisions, such as a county, a municipality, or a legally constituted board, district, commission, or authority, shall contract for geological services only with persons registered under this chapter or with a firm employing a registered geologist. (Code 1933, § 84-2527A, enacted by Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2127A, as redesignated by Ga. L. 1976, p. 695, § 1.)

43-19-21. Subpoena.

Reserved. Repealed by Ga. L. 1987, p. 603, § 12, effective June 30, 1987.

Editor's notes. — This Code section L. 1976, p. 695, § 1; Ga. L. 1982, p. 3, was based on Ga. L. 1975, p. 163, § 1; Ga. § 43.

43-19-22. Attorney General as legal adviser.

The Attorney General of this state or any assistant designated by him or her shall act as legal adviser of the board. (Code 1933, § 84-2526A, enacted by Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2126A, as redesignated by Ga. L. 1976, p. 695, § 1; Ga. L. 2002, p. 415, § 43.)

43-19-23. Filing of complaints.

Reserved. Repealed by Ga. L. 1987, p. 603, § 13, effective June 30, 1987.

Editor's notes. — This Code section was based on Ga. L. 1975, p. 163, § 1; Ga. L. 1976, p. 695, § 1.

43-19-24. Exceptions to operation of chapter.

Any person, except as specifically exempted below, who shall publicly practice or offer to practice publicly geology in this state is subject to this chapter. The following persons are exempt:

(1) Persons engaged solely in teaching the science of geology or engaged in nonpublic geologic research in this state;

(2) Officers and employees of the United States or this state, practicing solely as such officers or employees; and

(3) A subordinate to a geologist registered under this chapter or to a registered engineer, insofar as he acts solely in such capacity. This exemption, however, does not permit any such subordinate to practice geology for others in his own right or use the title "registered geologist." (Code 1933, § 84-2105A, enacted by Ga. L. 1975, p. 163, § 1.)

43-19-25. Partnership, limited liability, and corporate practice; nonpublic geological services; practice by nonresident or new resident.

(a) This chapter does not prohibit one or more geologists from practicing through the medium of a sole proprietorship, partnership, limited liability company, or corporation. In a partnership, limited

liability company, or corporation whose primary activity consists of geological services, at least one partner, member, or officer shall be a registered geologist.

(b) This chapter does not prevent or prohibit an individual, firm, company, association, or corporation whose principal business is other than the public practice of geology from employing a nonregistered geologist to perform nonpublic geological services necessary to the conduct of its business.

(c) This chapter shall not be construed to prevent or to affect:

(1) The practice of any profession or trade for which a license is required under any other law of this state; the practice of registered professional engineers from lawfully practicing soils mechanics, foundation engineering, and other professional engineering as provided in this title; or licensed architects from lawfully practicing architecture as provided in this title; or

(2) The practice of a person who is not a resident of and has no established place of business in this state or who has recently become a resident hereof practicing or offering to practice the profession of geology herein for more than 90 days in any calendar year if the person shall have filed with the board an application for a certificate of registration and shall have paid the fee required by this chapter. Such practice shall continue only for such time as the board requires for the consideration of the applicant for registration. (Code 1933, § 84-2106A, enacted by Ga. L. 1975, p. 163, § 1; Ga. L. 1987, p. 603, § 14; Ga. L. 1993, p. 123, § 40.)

Cross references. — Professional corporations generally, T. 14, C. 7.

43-19-26. Unlawful acts.

(a) It shall be unlawful for any person other than a registered geologist, a registered certified specialty geologist, or a subordinate under the direction of one of the above to prepare any geologic plans, reports, or documents in which the performance is related to the public welfare or safeguarding of life, health, property, or the environment.

(b) It shall be unlawful for anyone other than a geologist registered under this chapter to stamp or seal any plans, plats, reports, or other documents with the seal or stamp of a registered geologist or registered certified specialty geologist or to use in any manner the title "registered geologist" or the title of any registered certified specialty geologist unless registered, or registered and certified, under this chapter.

(c) It shall be unlawful for any person to affix his signature or to stamp or seal any plans, plats, reports, or other documents after the

certification of the registrant named thereon has expired or has been suspended or revoked unless the certificate has been renewed or reissued. (Code 1933, § 84-2104A, enacted by Ga. L. 1975, p. 163, § 1; Ga. L. 1976, p. 695, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, “specialty” was substituted for “speciality” in two places in subsection (b).

RESEARCH REFERENCES

ALR. — Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

43-19-27. Penalty.

Any person who publicly practices or offers to practice publicly geology for others in this state without being registered in accordance with this chapter; any person presenting or attempting to use as his own the certificate of registration or the seal of another; any person who gives any false or forged evidence of any kind to the board or to any member thereof in obtaining a certificate of registration; any person who falsely impersonates any other registrant of like or different name; or any person who attempts to use an expired or revoked certificate of registration or who attempts to practice at any time during a period when the board has suspended or revoked his certificate of registration shall be guilty of a misdemeanor. (Code 1933, § 84-2525A, enacted by Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2125A, as redesignated by Ga. L. 1976, p. 695, § 1.)

RESEARCH REFERENCES

ALR. — Injunction as available remedy against prosecution or arrest for conduct-

ing business or practicing profession without a license, 167 ALR 915.

43-19-28. Termination.

Repealed by Ga. L. 1992, p. 3137, § 16, effective July 1, 1992.

Editor's notes. — This Code section was part of the original Code enactment

(Ga. L. 1981, Ex. Sess., p. 8) and was amended by Ga. L. 1987, p. 603, § 15.

CHAPTER 20

HEARING AID DEALERS AND DISPENSERS

Sec.		Sec.	
43-20-1.	Short title.		place of practice and identification of dispensers, apprentice dispensers, and trainees; notice to holders of licenses and permits.
43-20-2.	Declaration of policy.	43-20-13.	Furnishing bill of sale or receipt to person supplied with hearing aid.
43-20-3.	Definitions.	43-20-14.	Biennial renewal of licenses; posting licenses; duplicate licenses.
43-20-4.	Creation of board; composition; qualifications of members; terms of office; vacancies; selection of officers.	43-20-15.	Continuing education requirement.
43-20-5.	Meetings; reimbursement of members; notice of meetings.	43-20-16.	Denial, nonrenewal, suspension, or revocation of licenses or permits; reprimands.
43-20-6.	General powers and duties of board; division director.	43-20-17.	Procedure as to contested cases; judicial review.
43-20-7.	License required; scope of authority of license holders; issuance of duplicate licenses.	43-20-18.	Injunctions.
43-20-8.	Issuance of licenses; fees.	43-20-19.	Exceptions to operation of chapter.
43-20-9.	Examinations; qualifications; apprentice dispensers; establishment of uniform criteria for passing and failing.	43-20-20.	Penalty.
43-20-10.	Nonresident licenses; reciprocity.	43-20-21.	Termination [Repealed].
43-20-11.	Apprentice dispenser's permit; training permits.		
43-20-12.	Notice to division director of		

Administrative rules and regulations. — Organization, Official Compilation of the Rules and Regulations of the

State of Georgia, Georgia State Board of Hearing Aid Dealers and Dispensers, Chapter 276-1.

OPINIONS OF THE ATTORNEY GENERAL

Hearing aid dispenser not audiologist. — Licensee under the Georgia Hearing Aid Dealers and Dispensers Act, Ga. L. 1978, p. 1728, is not an "audiologist" of any character or description and cannot

be represented as a "certified hearing aid audiologist," nor the licensee's services as including those of an "audiologist." 1975 Op. Att'y Gen. No. 75-5.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 39 Am. Jur. 2d, Health, §§ 1 et seq., 26 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58

Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq. **C.J.S.** — 15 C.J.S., Commerce, §§ 9 et

seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 39A C.J.S., Health and Environment, §§ 3 et seq., 37 et seq., 48 et seq. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees,

§ 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Validity and construction of state statutes regulating hearing aid fitting or sales, 96 ALR3d 1030.

43-20-1. Short title.

This chapter may be cited as the “Georgia Hearing Aid Dealers and Dispensers Act.” (Ga. L. 1970, p. 653, § 1; Code 1933, § 84-5601, enacted by Ga. L. 1978, p. 1728, § 1.)

43-20-2. Declaration of policy.

The purpose and intent of this chapter is to establish and enforce standards of competence and ethics in the dispensing of hearing aid devices or instruments, for profit or otherwise, and to protect the public from the dispensing of hearing aids, for profit or otherwise, by unskilled or unprincipled persons. (Ga. L. 1970, p. 653, § 2; Code 1933, § 84-5602, enacted by Ga. L. 1978, p. 1728, § 1.)

43-20-3. Definitions.

As used in this chapter, the term:

(1) “Apprentice dispenser’s permit” means a temporary nonrenewable one-year permit issued while the applicant is in apprenticeship under a licensed dispenser in order to become a licensed hearing aid dispenser.

(2) “Board” means the State Board of Hearing Aid Dealers and Dispensers.

(3) “Dealer’s license” means the license required for each office, store, or location established or maintained for the dispensing of hearing aid devices or instruments in this state.

(4) “Dispenser’s license” means the license required for each individual who shall engage in the practice of dispensing hearing aid instruments or devices to or for use by the eventual user thereof.

(5) “Hearing aid device or instrument,” “hearing aid,” or “aid” means any wearable electronic instrument or device designed for or represented or offered for the purpose of compensating for defective human hearing, including parts, attachments, ear molds, and acces-

sories, except batteries, cords, replacement tubing, and minor service limited to the removal of battery corrosion.

(6) "License" means any license issued to hearing aid dealers or to hearing aid dispensers by the State Board of Hearing Aid Dealers and Dispensers or by the division director on behalf of the board under this chapter.

(7) "Practice of dispensing hearing aids" means the providing of a hearing aid to a consumer by sale, rental, lease, or otherwise. A holder of a license or permit issued under this chapter shall be entitled to conduct testing and other procedures to determine suitability for use of a hearing aid, to determine hearing aid characteristics which properly compensate the hearing condition, to select suitable aids, to fit aids to the subject, and to counsel and instruct in the use thereof.

(8) "Training permit" means a temporary renewable six-month permit issued while the applicant is in training, under the direct supervision and immediate observation of a licensed dispenser, to become a licensed dispenser. (Ga. L. 1970, p. 653, § 3; Code 1933, § 84-5604, enacted by Ga. L. 1978, p. 1728, § 1; Ga. L. 2000, p. 1706, § 19.)

Administrative rules and regulations. — Definitions, Official Compilation of the Rules and Regulations of the State

of Georgia, Georgia State Board of Hearing Aid Dealers and Dispensers, Chapter 276-4.

OPINIONS OF THE ATTORNEY GENERAL

Only licensed hearing aid dealers may make ear molds. — Since the statute expressly states that an ear mold is included within the definition of hearing aid device, and making an ear impression for an ear mold can be characterized as part of the dispensing process under the

language of those provisions, it is unlawful for one not licensed under the provisions regarding audiologists to make ear impressions for ear molds to be used with hearing aids. 1978 Op. Att'y Gen. No. 78-84 (see O.C.G.A. § 43-20-3).

43-20-4. Creation of board; composition; qualifications of members; terms of office; vacancies; selection of officers.

(a) There shall be established a State Board of Hearing Aid Dealers and Dispensers, which shall administer and enforce this chapter.

(b) Members of the board shall be residents of the state. The board shall consist of seven members; four of whom shall hold licenses issued by the board and shall have no less than three years' experience as a hearing aid dispenser; one of whom shall be a diplomate or eligible for certification by the American Board of Otolaryngology and licensed to practice medicine in this state; one of whom shall be an audiologist

licensed under Chapter 44 of this title; and one of whom shall be appointed from the public at large.

(c) Each member of the board shall be appointed by the Governor with the approval of the Secretary of State. The term of office for each member shall be three years or until his successor has been appointed and qualified except that, for the first board appointed under this chapter, two members shall be appointed for a two-year term and three members shall be appointed for a three-year term. Upon the expiration of each term, the Governor, with the approval of the Secretary of State, shall appoint a successor as provided above. Any vacancy on the board arising from death, resignation, or other cause shall be filled by such appointment for the unexpired term. The members of the board shall annually designate one such member to serve as chairman and another to serve as vice-chairman and may select such additional officers as the board deems necessary. (Ga. L. 1970, p. 653, § 13; Code 1933, § 84-5614, enacted by Ga. L. 1978, p. 1728, § 1; Ga. L. 1991, p. 401, § 1; Ga. L. 1996, p. 1017, § 1.)

43-20-5. Meetings; reimbursement of members; notice of meetings.

(a) The board shall meet not less than once a year at a place, day, and hour determined by the division director and as many other times per year as deemed necessary. Each member of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.

(b) The division director shall notify each member of the board not less than ten days in advance of the time and place of any meeting of the board. (Ga. L. 1970, p. 653, § 15; Code 1933, § 84-5616, enacted by Ga. L. 1978, p. 1728, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2000, p. 1706, § 19; Ga. L. 2001, p. 4, § 43; Ga. L. 2010, p. 266, § 25/SB 195.)

The 2010 amendment, effective May 20, 2010, deleted “by certified mail or statutory overnight delivery” following “board” near the middle of subsection (b).

43-20-6. General powers and duties of board; division director.

(a) The board shall have the responsibility and duty of administering and enforcing this chapter. The board shall have the power to establish and to revise minimal procedure and equipment requirements which shall be used in the dispensing of hearing aids.

(b) The board shall:

(1) Supervise the issuance of licenses and administer qualifying examinations;

(2) License persons who make proper application to the division director and who meet the qualifications for licensure;

- (3) Issue and renew licenses;
 - (4) Suspend, revoke, or otherwise sanction licenses in the manner provided in this chapter;
 - (5) Appoint representatives to conduct or supervise examinations; and
 - (6) Make available to the public a copy of this chapter, any amendments thereto, and all adopted rules.
- (c) The division director shall be guided by the recommendations of the board in all matters relating to this chapter and shall assist the board in carrying out this chapter.
- (d) In the administration and enforcement of this chapter, the board shall have the power to adopt reasonable rules and regulations not inconsistent with this chapter and the Constitution and laws of this state or of the United States for governing its times and places of meetings; for organization and reorganization; for the holding of examinations; for governing all other matters requisite to the exercising of its powers; for the performance of its duties relating to examinations; for granting, suspending, revoking, or otherwise sanctioning licenses; and for the transaction of its business under this chapter.
- (e) The board may provide, by regulation, for the general scope of the examination described in Code Section 43-20-9. The board may approve the examination and obtain advice and assistance in providing for and grading such examination; and the division director may contract with third parties to perform administrative services related to the examination as he or she deems appropriate. (Ga. L. 1970, p. 653, § 14; Code 1933, § 84-5615, enacted by Ga. L. 1978, p. 1728, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2010, p. 266, § 26/SB 195.)

The 2010 amendment, effective May 20, 2010, deleted the former second sentence of subsection (a), which read: "The board shall be responsible for preparing the examinations required by this chapter; and the division director shall assist the board in carrying out this chapter."; in subsection (b), deleted former paragraph (b)(1), which read: "Authorize, with the advice of the division director, all disbursements necessary to carry out this chapter and the rules and regulations promulgated by the board;"; redesignated former paragraphs (b)(2) and (b)(3) as present paragraphs (b)(1) and (b)(2), respectively, deleted former paragraph

(b)(4), which read: "Purchase and maintain or rent facilities necessary to carry out the examination of applicants as provided in this chapter;"; redesignated former paragraphs (b)(5) through (b)(8) as present paragraphs (b)(3) through (b)(6), respectively, and substituted "Make available to the public" for "Provide to each licensed dealer" at the beginning of paragraph (b)(6); added "and shall assist the board in carrying out this chapter" at the end of subsection (c); and added subsection (e).

Administrative rules and regulations. — Rules of the profession, Official Compilation of the Rules and Regulations

of the State of Georgia, Rules of Georgia State Board of Hearing Aid Dealers and Dispensers, Chapter 276-1 et seq.

43-20-7. License required; scope of authority of license holders; issuance of duplicate licenses.

(a) It is unlawful for any person or firm to engage in the practice of dispensing hearing aids, as defined in this chapter, in this state without having a valid license issued under this chapter.

(b) No person or firm, except those exempted in Code Section 43-20-19, shall engage in the practice of dispensing hearing aid devices or instruments or display a sign or in any way advertise or represent himself or any firm as practicing the dispensing of hearing aid devices or instruments in this state unless such person holds an unsuspended, unrevoked license issued by the board.

(c) A dispenser's license issued under this chapter shall entitle the holder to dispense hearing aid devices or instruments under the supervision of a licensed dealer.

(d) The dealer's license issued under this chapter shall permit and require the holder to establish and operate an establishment open to the public for the purpose of dispensing hearing aids and providing follow-up services.

(e) No firm shall engage in the practice of dispensing hearing aid devices or instruments or display a sign or in any way advertise or represent itself as dispensing hearing aid devices or instruments in this state unless each office or location is staffed by a person who holds a valid dispenser's license issued under this chapter.

(f) Duplicate dealers' licenses shall be issued by the division director on behalf of the board to valid license holders operating more than one office or place of practice upon the payment of an additional dealer's license fee for each location, provided that each such location shall be staffed and supervised by a person holding a valid dispenser's license issued under this chapter. (Code 1933, § 84-5603, enacted by Ga. L. 1978, p. 1728, § 1; Ga. L. 2000, p. 1706, § 19.)

Cross references. — False or fraudulent advertising, § 10-1-420 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Unlawful to make ear molds without license. — Since Ga. L. 1978, p. 1728, § 1 expressly states that an ear mold is included within the definition of a hearing aid device, and making an ear impression

for an ear mold can be characterized as part of the dispensing process under the language of those provisions, it is unlawful for a person not licensed under the provisions regarding audiologists to make

ear impressions for ear molds to be used with hearing aids. 1978 Op. Att’y Gen. No. 78-84 (see O.C.G.A. §§ 43-20-3 and 43-20-7).

RESEARCH REFERENCES

ALR. — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.
 Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.
 Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.
 Practices forbidden by state deceptive trade practice and consumer protection acts, 89 ALR3d 449.

43-20-8. Issuance of licenses; fees.

(a) The board may issue a dealer’s license to any applicant for a dealer’s license upon compliance with this chapter, upon payment of the appropriate license fee for a dealer’s license, and upon the presentation of evidence satisfactory to the board that he has established or will establish and maintain a regular office, store, or location for the dispensing of hearing aid devices or instruments, and that a person who possesses a valid Georgia dispenser’s license will be responsible for the dispensing of hearing aids under such dealer’s license.

(b) The board may issue a dispenser’s license to an applicant only when the applicant has satisfactorily completed a board approved examination and when proof of age has been verified. The license shall authorize the holder to dispense hearing aids under the general supervision of a licensed dealer.

(c) The dealer’s license fee shall be in an amount determined by the board and must be paid for each office or location established by the dealer.

(d) The dispenser’s license fee shall be in an amount determined by the board. (Ga. L. 1970, p. 653, § 7; Code 1933, § 84-5607, enacted by Ga. L. 1978, p. 1728, § 1; Ga. L. 1984, p. 1119, § 1; Ga. L. 1991, p. 401, § 2; Ga. L. 2010, p. 266, § 27/SB 195.)

The 2010 amendment, effective May 20, 2010, substituted “a board approved examination” for “an examination administered under the direction of the board” in the middle of the first sentence of subsection (b).
Administrative rules and regulations. — Fees, renewal, and restatement, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Hearing Aid Dealers and Dispensers, Chapter 276-7.

RESEARCH REFERENCES

ALR. — Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

43-20-9. Examinations; qualifications; apprentice dispensers; establishment of uniform criteria for passing and failing.

(a) An applicant may obtain a license by successfully passing a board approved examination, provided that the applicant:

- (1) Is at least 18 years of age; and
- (2) Is of good moral character.

(b) Every apprentice dispenser who has held the permit over 30 days shall be scheduled to stand for the written examination at every scheduled examination until all sections have been passed, the permit has been revoked by the board, or the permit has expired. The board shall have the power to revoke a permit without a hearing if the holder of an apprentice dispenser permit fails to stand for the examination. The board shall also have the power to revoke a permit without a hearing if the holder of an apprentice dispenser permit fails to pass the written portion of the examination on two occasions. The board may include the fee for an initial examination as a condition for approval of an applicant for an apprentice dispenser's permit.

(c) The board shall establish uniform criteria for passing and failing candidates. (Ga. L. 1970, p. 653, § 9; Code 1933, § 84-5609, enacted by Ga. L. 1978, p. 1728, § 1; Ga. L. 1984, p. 1119, § 2; Ga. L. 1989, p. 423, § 1; Ga. L. 1991, p. 401, § 3; Ga. L. 1993, p. 452, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2010, p. 266, § 28/SB 195.)

The 2010 amendment, effective May 20, 2010, substituted "board approved examination" for "qualifying examination administered by the board" in the middle of subsection (a); deleted former subsection (b), which read: "The division director shall schedule at least four examinations each year, one of which will be in each calendar quarter."; redesignated former subsection (c) as present subsection (b); in the first sentence of present subsection (b), substituted "Every" for "The division director shall schedule every" at the beginning and inserted "shall be scheduled" near the middle; deleted former subsection (d), which read: "Each applicant desiring to become licensed as a dispenser,

other than holders of apprentice dispensers' permits, shall make application for examination to the division director, accompanied by the examination fee as provided by the board in its rules and regulations."; deleted former subsection (e), which read: "The qualifying examination shall be compiled by or at the direction of the board."; and redesignated former subsection (f) as present subsection (c).

Administrative rules and regulations. — Examinations, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Hearing Aid Dealers and Dispensers, Chapter 276-2.

RESEARCH REFERENCES

ALR. — Failure to procure occupational validity or enforceability of contract, 30 or business license or permit as affecting ALR 834; 42 ALR 1226; 118 ALR 646.

43-20-10. Nonresident licenses; reciprocity.

(a) Nonresident dealers' licenses may be issued to individuals domiciled outside of this state upon presentation of satisfactory evidence to the board that they comply with all provisions of this chapter for a dealer's license and upon payment of the fees required for such licenses. Holders of nonresident dealers' licenses shall be governed by and shall be subject to all conditions and provisions of this chapter relating to dealers' licenses.

(b) A nonresident dispenser's license may be issued to an applicant who holds a current unsuspended, unrevoked license to practice the dispensing of hearing aids in another state or jurisdiction upon payment of the fee provided for a dispenser's license under this chapter and upon presentation of satisfactory evidence to the board that such other state or jurisdiction has requirements equivalent to or higher than those in effect pursuant to this chapter for the practice of dispensing hearing aids, provided that such state or jurisdiction has a program equivalent to or stricter than that required by this chapter for determining the qualifications of applicants for a dispenser's license and that such state or jurisdiction has a provision for reciprocity and has entered into a reciprocal agreement with the board. No such applicant for a reciprocal nonresident dispenser's license shall be required to submit to or undergo a qualifying examination. The holder of a nonresident dispenser's license shall be registered in the same manner as the holder of a regular resident dispenser's license. Fees, grounds, and procedures for renewal, suspension, and revocation of dispensers' licenses shall apply to all nonresident dispensers' licenses. (Ga. L. 1970, p. 653, § 8; Code 1933, § 84-5608, enacted by Ga. L. 1978, p. 1728, § 1; Ga. L. 1991, p. 401, § 4.)

Cross references. — Cooperation between Georgia and other states generally, T. 28, C. 6.

43-20-11. Apprentice dispenser's permit; training permits.

(a) An apprentice dispenser's permit shall be issued by the division director on behalf of the board only when:

(1) Application has been made;

(2) A statement of supervision has been provided by a licensed dispenser;

(3) A statement has been made by the supervising dealer that the applicant is capable of making the tests and applying the techniques required to dispense hearing aids in accordance with this chapter;

(4) Proof of age has been made. Apprentice dispensers' permits are limited to one year in duration and shall not be renewed; and

(5) The applicant has passed the practical portion of the examination.

(b) Training permits shall be issued by the division director on behalf of the board only when application has been made and a statement of supervision has been provided by a licensed dispenser. The permit should authorize the person to dispense hearing aids only under direct supervision and immediate observation of the licensed dispenser who shall be responsible for the trainees' compliance with this chapter. Proof of age shall also be made. Training permits should be for a duration of six months and may be renewed as often as necessary for additional six-month time periods so long as the requirements of this Code section for issuance of permits are met for each renewal. (Ga. L. 1970, p. 653, § 10; Code 1933, § 84-5610, enacted by Ga. L. 1978, p. 1728, § 1; Ga. L. 1984, p. 1119, § 3; Ga. L. 1989, p. 423, § 2; Ga. L. 1991, p. 401, § 5; Ga. L. 2000, p. 1706, § 19.)

43-20-12. Notice to division director of place of practice and identification of dispensers, apprentice dispensers, and trainees; notice to holders of licenses and permits.

(a) A person holding a dealer's license shall notify the division director in writing of the regular addresses of places of business operated by the dealer for dispensing hearing aids. Furthermore, the dealer is required to notify the division director in writing as to the names and license or permit numbers of all dispensers, apprentice dispensers, and trainees employed or otherwise practicing at each of his or her places of business. The dealer is required to notify the division director in writing of any changes of the foregoing within seven calendar days of such change. Any failure shall be considered a violation of this chapter by the dealer.

(b) Any notice required to be given by the division director or by the board to any person who holds a license or permit issued by the board shall be mailed to such licensee or permit holder to the address of the place of practice last recorded with the division director; and such mailing shall constitute sufficient notice to such licensee. (Ga. L. 1970, p. 653, § 11; Code 1933, § 84-5611, enacted by Ga. L. 1978, p. 1728, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2000, p. 1706, § 19; Ga. L. 2010, p. 266, § 29/SB 195.)

The 2010 amendment, effective May 20, 2010, in subsection (a), inserted “or her” near the end of the second sentence; and deleted “by certified mail or statutory overnight delivery” following “permit holder” in the middle of subsection (b).

43-20-13. Furnishing bill of sale or receipt to person supplied with hearing aid.

Any person who dispenses hearing aid devices or instruments shall deliver to each person supplied with a hearing aid device or instrument a written receipt or bill of sale in such form as may be prescribed by the board, which receipt or bill of sale shall contain, as a minimum, the dealer’s name, license number, address, and schedule of office hours, as well as the dispenser’s name, signature, and license number, together with specification as to the make and model and serial number of the hearing aid device or instrument furnished. The receipt or bill of sale shall also clearly state the full terms of sale, including guarantees, if any, and shall also contain such other information as the board may determine to be necessary in the public interest. If a hearing aid device or instrument which is not new is sold, the receipt therefor must be clearly marked “used” or “reconditioned,” whichever is applicable, with the terms of the guarantee, if any, clearly stated. (Ga. L. 1970, p. 653, § 4; Code 1933, § 84-5605, enacted by Ga. L. 1978, p. 1728, § 1.)

43-20-14. Biennial renewal of licenses; posting licenses; duplicate licenses.

Licenses issued under this chapter shall be renewable biennially. Each and every dealer’s license and dispenser’s license required by this chapter shall be conspicuously posted at each location and place of practice at all times as may be required by regulations established by the board. When more than one office or place of business is operated, a duplicate license shall be obtained from the division director for each such location or place regularly carrying on the practice of dispensing hearing aid devices or instruments, upon the payment of an additional appropriate fee for each duplicate license. The address of the location or place of doing business shall be stated on the duplicate license, which shall be posted at the location. (Ga. L. 1970, p. 653, § 12; Code 1933, § 84-5612, enacted by Ga. L. 1978, p. 1728, § 1; Ga. L. 2000, p. 1706, § 19.)

43-20-15. Continuing education requirement.

As a prerequisite for the renewal of a dispenser’s license, the dispenser must provide proof to the board that the dispenser has successfully completed 14 hours of continuing education in a program approved by the board. The board may promulgate such rules and

regulations as are necessary to implement the continuing education requirement. (Code 1933, § 84-5613, enacted by Ga. L. 1978, p. 1728, § 1; Ga. L. 1984, p. 1119, § 4; Ga. L. 1994, p. 1715, § 1.)

Administrative rules and regulations. — Continuing education, Official Compilation of the Rules and Regulations

of the State of Georgia, Georgia State Board of Hearing Aid Dealers and Dispensers, Chapter 276-10.

43-20-16. Denial, nonrenewal, suspension, or revocation of licenses or permits; reprimands.

In addition to any other penalties as provided for in this chapter, the board is authorized to reprimand any licensee or permit holder under this chapter and to suspend, revoke, or otherwise sanction his license or permit for a fixed period, or may refuse to renew or may deny the license or permit, upon affording an opportunity for a hearing, for any of the following causes:

(1) Conviction of, or a plea of *nolo contendere* to, a felony or a misdemeanor involving moral turpitude. The record of conviction or plea or a copy thereof certified by the clerk of the court shall be conclusive evidence of such conviction or plea;

(2) Procuring of a license or permit by fraud or deceit;

(3) Selling, bartering, or offering to sell or barter a license or permit;

(4) Purchasing or procuring by barter a license or permit with intent to use it as evidence of the holder's qualifications to practice the dispensing of hearing aid devices or instruments or to sell such devices or instruments;

(5) Altering a license or permit with fraudulent intent;

(6) Using or attempting to use as a valid license or permit a license or permit which has been purchased, fraudulently obtained, counterfeited, or materially altered;

(7) Willfully making a false statement in an application for a license or permit or application for renewal of a license or permit;

(8) Being found guilty of unethical conduct by the board or by some other tribunal or court of law. Unethical conduct shall include:

(A) Fraud or misrepresentation in the dispensing of a hearing aid;

(B) Knowingly employing, directly or indirectly, any suspended or unlicensed person to perform any service covered by this chapter;

(C) Using, or causing or promoting the use of, any advertising material, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading, deceptive, or untruthful;

(D) Advertising a particular model or type of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type and where it is determined that the purchase of the advertisement is to obtain prospects for the sale of a different model or type than that advertised;

(E) Representing that the services or advice of a licensed physician or an audiologist will be used or made available in the selection, adjustment, maintenance, or repair of hearing aids when that is not true or using the words "hearing center," "doctor," "ear specialist," "clinic," "clinical audiologists," "state licensed clinic," "state registered," "state certified," "state approved," or any other term, abbreviation, or symbol when it would falsely give the impression that one is being treated medically or that the licensee's or permit holder's service has been recommended by the state;

(F) Representing or implying that a hearing aid device or instrument is or will be "custom made," "made to order," "prescription made," or in any other sense specially fabricated for an individual person when such is not the case;

(G) Representing that a recommendation for a specific brand or model aid or source of product or service has resulted from an unbiased or impartial process when such is not the case;

(H) Permitting another to use his license or permit;

(I) Advertising a manufacturer's product or using a manufacturer's name or trademark which implies a relationship with the manufacturer that does not exist;

(J) Giving or receiving, directly or indirectly, or offering to give or receive money or anything of value to any person who advises another in a professional capacity as an inducement to influence or have such person influence others to purchase or contract to purchase any product sold or offered for sale by a licensee or permit holder or to influence persons to refrain from dealing in the products of competitors;

(K) Selecting or fitting a hearing aid for a person who has not been given the appropriate tests utilizing procedures and instrumentation as specified by this chapter or by the rules and regulations of the board; or

(L) Committing any other professionally immoral act;

(9) Practicing while suffering from a contagious or infectious disease;

(10) Dispensing hearing aids under a false name or alias;

(11) Violating any of the provisions of this chapter or the rules and regulations promulgated by the board; or

(12) Gross incompetence or negligence in dispensing hearing aids. (Ga. L. 1970, p. 653, § 16; Code 1933, § 84-5617, enacted by Ga. L. 1978, p. 1728, § 1; Ga. L. 1982, p. 3, § 43.)

OPINIONS OF THE ATTORNEY GENERAL

Licensed hearing aid dispensers are prohibited from holding themselves out as "audiologists" or as "cer-

tified hearing aid audiologists." 1975 Op. Att'y Gen. No. 75-5.

RESEARCH REFERENCES

ALR. — Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 ALR 1388.

Practices forbidden by state deceptive trade practice and consumer protection acts, 89 ALR3d 449.

43-20-17. Procedure as to contested cases; judicial review.

Contested cases under this chapter shall be administered in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; provided, however, that any person whose license or permit has been revoked, suspended, or otherwise sanctioned by a final order of the board or denied or not renewed pursuant to Code Section 43-20-16 may appeal to the superior court to review the decision of the board to determine its legal correctness; and provided, further, that the findings of fact rendered by the board will be accepted by the court if said findings are supported by any evidence. (Ga. L. 1970, p. 653, § 17; Code 1933, § 84-5618, enacted by Ga. L. 1978, p. 1728, § 1.)

43-20-18. Injunctions.

The board shall have the power to bring an action to enjoin any person, firm, or corporation who, without being licensed or issued a permit by the board, dispenses hearing aids in this state. The action shall be filed in the county in which such person resides or practices or in the county where the firm or corporation maintains an office or practices. If it shall appear that the person, firm, or corporation is guilty of dispensing hearing aids without a license or permit issued by the board, then such person, firm, or corporation shall be enjoined from dispensing hearing aids without a valid license or permit throughout

the state. It is declared that such unlicensed activities are a menace and a nuisance and are dangerous to the public health, safety, and welfare; and, therefore, it shall not be necessary, in order to obtain relief, as provided in this Code section, for the board to allege or prove that there is no adequate remedy at law. (Ga. L. 1970, p. 653, § 19; Code 1933, § 84-5619, enacted by Ga. L. 1978, p. 1728, § 1.)

43-20-19. Exceptions to operation of chapter.

(a) This chapter shall not apply to a person who is a physician licensed to practice medicine in this state or to a person who is licensed as an audiologist under Chapter 44 of this title.

(b) This chapter shall not apply to a person while he is working as an employee of a federal, state, county, or municipal agency or a duly chartered educational institution or a training center, provided that such person does not engage in the sale, rental, or lease of hearing aids.

(c) Nothing in this chapter shall be construed to prevent a person licensed under any other law of this state from operating within the scope of that license, provided that such person does not engage in the sale, rental, or lease of hearing aids.

(d) Nothing in this chapter shall prohibit a corporation, partnership, trust, association, or other like organization maintaining an established business address from engaging in the business of selling or offering for sale hearing aid devices or instruments at retail, provided that it holds a dealer's license issued under this chapter and that it employs only properly licensed persons who engage in the sale or dispensing of such products to the purchaser and user thereof. Such corporations, partnerships, trusts, associations, or other like organizations shall file with the board a list of all licensed dispensers directly or indirectly employed by them, including the addresses and license numbers of such dispensers. (Ga. L. 1970, p. 653, § 5; Code 1933, § 84-5606, enacted by Ga. L. 1978, p. 1728, § 1; Ga. L. 1992, p. 3316, § 1.)

Cross references. — Professional corporations generally, T. 14, C. 7. Professional associations generally, T. 14, C. 10.

43-20-20. Penalty.

Any person who dispenses or sells hearing aid devices or instruments without a license or who otherwise is in violation of this chapter shall be guilty of a misdemeanor. For the purposes of this chapter, such misdemeanor shall be considered a crime involving moral turpitude. (Ga. L. 1970, p. 653, § 21; Code 1933, § 84-9982, enacted by Ga. L. 1978, p. 1728, § 2.)

43-20-21. Termination.

Repealed by Ga. L. 1992, p. 3137, § 17, effective July 1, 1992.

Editor's notes. — This Code section amended by Ga. L. 1984, p. 1119, § 5 and was part of the original Code enactment Ga. L. 1990, p. 1857, § 1. (Ga. L. 1981, Ex. Sess., p. 8) and was

CHAPTER 20A

REGULATION OF PRIVATE IMMIGRATION ASSISTANCE SERVICES

Sec.		Sec.	
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43-20A-3.	Purpose and intent of chapter; administration and enforcement.	43-20A-14.	Disclosure of information.
43-20A-4.	Licensing of immigration assistance providers.	43-20A-15.	Formal order of investigation; authorized action; emergency order; notice requirements.
43-20A-5.	Permissible services; terms of contract for immigration services.	43-20A-16.	Cause for disciplinary actions; disciplinary order a final order.
43-20A-6.	Exemptions from provisions of this chapter.	43-20A-17.	Suspension of license for non-payment, default, or breach of repayment or service obligation under certain educational loan or scholarship programs; terms of reinstatement.
43-20A-7.	Civil penalties for violations; private cause of action; rules and regulations.	43-20A-18.	Cease and desist order.
43-20A-8.	Maintaining documents.	43-20A-19.	Notice of opportunity for hearing.
43-20A-9.	Obligation of service provider to provide notice of pending disciplinary, administrative, civil, or criminal action.	43-20A-20.	Licensee required to notify licensing authority within 10 days of felony conviction.
43-20A-10.	Fees.	43-20A-21.	Criminal penalties for violations.
43-20A-11.	Amendment of license application to account for events or developments after license granted.		

Cross references. — Security and immigration compliance, T. 13, C. 10, A. 3. Enforcement of immigration and custom laws, § 35-2-14.

Editor’s notes. — Ga. L. 2006, p. 105, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Georgia Security and Immigration Compliance Act.’ All requirements of this Act concerning immigration or the classification of immigration

status shall be construed in conformity with federal immigration law.”

Ga. L. 2008, p. 1112, § 15, effective July 1, 2008, repealed the Code sections formerly codified at this chapter and enacted the current chapter. The former chapter consisted of Code Sections 43-20A-1 through 43-20A-4, relating to regulation of private immigration assistance services, and was based on Ga. L. 2006, p. 105, § 6/SB 529.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Extreme Hardship Suspending Deportation of Alien, 35 POF2d 459.

Political Asylum — Well Founded Fear of Persecution, 13 POF3d 665.
Wrongful Confinement to a Mental

Health or Developmental Disabilities Facility, 44 POF3d 217

C.J.S. — 3A C.J.S., Aliens, § 726.

43-20A-1. Short title.

This chapter shall be known and may be cited as the “Registration of Immigration Assistance Act.” (Code 1981, § 43-20A-1, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.)

Law reviews. — For article, “The Georgia Security and Immigration Compliance Act: Comprehensive Immigration

Reform in Georgia — “Think Globally ... Act Locally,” see 13 Ga. St. B.J. 14 (2007).

43-20A-2. Definitions.

As used in this chapter, the term:

(1) “Advertise” or “advertising” means any communication, written or otherwise, produced or caused to be produced by a person licensed pursuant to this chapter promoting the goods or services regulated by this chapter.

(2) “Alien” means any person not a citizen of the United States.

(3) “Application” means any forms, documents, and information required pursuant to this chapter that applicants are required to file with the Secretary of State.

(4) “Client” means any person seeking immigration assistance.

(5) “Compensation” means money, property, services, promise of payment, or any other consideration or anything of value.

(6) “Immigrant” means every alien with the exception of an alien within a class of nonimmigrant aliens as defined in 8 U.S.C.A. Section 1101(a)(15).

(7) “Immigration assistance” means any service provided to clients for compensation related to immigration matters, but shall not include legal advice, recommending a specific course of legal action, or providing any other assistance that requires legal analysis, legal judgment, or the interpretation of the law.

(8) “Immigration assistance provider” means any person who is licensed to provide immigration assistance pursuant to this chapter.

(9) “Immigration matter” means any proceeding, filing, or action affecting the nonimmigrant, immigrant, or citizenship status of any person that arises under:

(A) Immigration and naturalization law, executive order, or presidential proclamation of the United States or any foreign country; or

(B) Action of the United States Department of Labor, the United States Department of State, the United States Department of Homeland Security, or the United States Department of Justice.

(10) “Nonimmigrant” means any alien within a class of nonimmigrant aliens as defined in 8 U.S.C.A. Section 1101(a)(15).

(11) “Order” means, but is not limited to, an administrative order issued under the provisions of this chapter or a similar order issued by a court of competent jurisdiction, any federal, foreign, or state agency, or a self-regulatory organization that makes a finding that the provisions of this chapter have been violated and sanctions administered.

(12) “Person” means any individual, partnership, corporation, association, or private organization of any character, but not a governmental entity of any kind. (Code 1981, § 43-20A-2, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055; Ga. L. 2011, p. 752, § 43/HB 142.)

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted “means” for “shall mean” in paragraph (4).

43-20A-3. Purpose and intent of chapter; administration and enforcement.

The purpose and intent of this chapter is to establish and enforce standards of ethics in the profession of immigration assistance by private individuals who are not exempted by this chapter. This chapter shall be administered and enforced by the Secretary of State. The Secretary of State may delegate such of his or her powers or duties under this chapter as he or she desires to a division director in his or her office. With respect to the enforcement of this chapter, the Secretary of State shall retain all powers and duties and may perform all functions of the licensing boards as provided in Chapter 1 of this title. (Code 1981, § 43-20A-3, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.)

43-20A-4. Licensing of immigration assistance providers.

(a) A person shall not provide immigration assistance in this state without holding a license issued pursuant to this chapter as an immigration assistance provider.

(b) Any person desiring to be licensed as an immigration assistance provider shall file an application for such license with the Secretary of State. All original and subsequent applications filed with the Secretary of State shall be upon such form and in such detail as the Secretary of State shall prescribe, setting forth the following:

(1) The name and address of the applicant or the name under which he or she intends to conduct business and, if the applicant is a partnership or limited liability company, the name and residence address of each member thereof and the name under which the partnership or limited liability company business is to be conducted and, if the applicant is a corporation, the name and address of each of its principal officers;

(2) The place or places, including the city with the street and street number, if any, where the business is to be conducted; and

(3) Such other information as the Secretary of State shall require.

(c) Notwithstanding any provision of Article 4 of Chapter 18 of Title 50 to the contrary, all applications, including supporting documents and other personal information submitted by applicants and licensees as part of an application filed with the Secretary of State, shall be confidential. The Secretary of State shall deem as public records the following information and shall make such information reasonably available for inspection by the general public: a licensee's name, license number and status, business name, business address, business telephone number, type of license held, and term of license; the fact that a licensee has or has not received a disciplinary sanction; and such other information pertaining to the license of a licensee as the Secretary of State may determine by rule.

(d) No person shall be granted a license as an immigration assistance provider unless such person:

(1) Is 18 years of age or older;

(2) Is a United States citizen or holds a valid legal immigration status pursuant to federal law;

(3) Provides a criminal background report and, within the five-year period preceding the date of the application, has no criminal convictions, other than traffic violations;

(4) Completes and submits an application;

(5) Provides proof of a \$5,000.00 performance bond issued in a form acceptable to the Secretary of State by a bonding company licensed to conduct bonding business in the State of Georgia; and

(6) If an applicant intends to provide services which shall require him or her to control the legal funds of a client seeking immigration assistance, provides a financial statement for the current fiscal year.

(e) The Secretary of State shall establish an appropriate procedure for the acceptance and review of applications submitted pursuant to subsection (b) of this Code section.

(f) All immigration assistance providers holding licenses in good standing shall be eligible for the renewal of such license pursuant to procedures established by the Secretary of State. In the event a licensee fails to renew his or her license, such license shall be automatically revoked. (Code 1981, § 43-20A-4, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.)

43-20A-5. Permissible services; terms of contract for immigration services.

(a) An immigration assistance provider licensee may perform the following services as immigration assistance:

(1) Completing a government agency form on behalf of the client and appropriate to the client's needs;

(2) Transcribing responses to a government agency form which is related to an immigration matter; provided, however, that advice shall not be offered to a client as to his or her answers on such forms;

(3) Translating information on forms to a client and translating the client's answers to questions posed on such forms;

(4) Securing for the client supporting documents currently in existence, such as birth and marriage certificates, which may be needed to be submitted with government agency forms;

(5) Notarizing signatures on government agency forms, provided that the person performing the service is a notary public commissioned in the State of Georgia and is lawfully present in the United States;

(6) Preparing or arranging for the preparation of photographs and fingerprints;

(7) Arranging for the performance of medical testing (including X-rays and AIDS tests) and the obtaining of reports of such test results; and

(8) Performing such other services that the Secretary of State determines by rule may be appropriately performed by such licensees in light of the purposes of this chapter.

(b) A contract to provide any service in conjunction with immigration assistance shall clearly state the obligations of the immigration assistance provider and the client who is to receive such service. (Code 1981, § 43-20A-5, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.)

43-20A-6. Exemptions from provisions of this chapter.

(a) The following persons are exempt from this chapter:

(1) An attorney licensed to practice law in Georgia or an attorney licensed to practice law in any other state or territory of the United States or in any foreign country when acting with the approval of a judge having lawful jurisdiction over the matter;

(2) A legal intern, clerk, paralegal, or person in a similar position employed or independently contracted by and under the direct supervision of a licensed attorney meeting the requirements in paragraph (1) of this subsection and rendering immigration assistance in the course of employment;

(3) A not for profit organization recognized by the Board of Immigration Appeals under 8 C.F.R. 292.2(a) and employees of such organizations accredited under 8 C.F.R. 292.2(d); and

(4) Any person employing or desiring to employ an alien or nonimmigrant alien, where the organization, its employees, or its agents provide nonlegal advice in conjunction with immigration assistance in immigration matters to alien or nonimmigrant alien employees or potential employees without compensation from the individuals to whom such nonlegal advice in conjunction with immigration assistance is provided.

(b) Any person who provides or offers immigration assistance and is not exempted pursuant to this Code section shall post signs at his or her place of business setting forth information in English and in every other language in which the person provides or offers to provide immigration assistance. Each language shall be on a separate sign. Signs shall be posted in a location where the signs will be visible to clients. Each sign shall be at least 12 inches by 17 inches and shall contain the following statement:

"I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE."

(c) Every person engaged in immigration assistance that is not an attorney and that advertises immigration assistance in a language other than English shall include conspicuously in such advertisement the following notice in English and the language in which the advertisement appears: **"I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE."** If such advertisement is by radio or television, the statement may be modified but shall include substantially the same message.

(d) Any person who provides or offers immigration assistance that is not exempted pursuant to this Code section shall not, in any document identifying such person as an immigration assistance provider, trans-

late from English into another language terms or titles including, but not limited to, notary public, notary, licensed, attorney, lawyer, or any other term that implies the person is an attorney.

(e) A person engaged in providing immigration assistance that is not exempted pursuant this Code section as a licensed attorney shall not:

(1) Refuse to return documents supplied by, prepared on behalf of, or paid for by the client upon the request of the client. Such documents shall be returned upon request even if there is a fee dispute between such person and the client;

(2) Represent or advertise, in conjunction with immigration assistance, other titles or credentials, including but not limited to “notary public” or “immigration consultant,” that could cause a client to believe that the person possesses special professional skills or is authorized to provide advice on an immigration matter; provided, however, that a certified notary public may use the term “notary public” if the use is accompanied by the statement that the person is not an attorney and the term “notary public” is not translated to another language; or

(3) Provide materially false or misleading information in an application for licensure or renewal of a license. (Code 1981, § 43-20A-6, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.)

43-20A-7. Civil penalties for violations; private cause of action; rules and regulations.

(a) The Secretary of State may assess civil penalties against any individual or entity that he or she finds to have violated this chapter in an amount of up to \$1,000.00 per violation not to exceed \$50,000.00. A civil penalty assessed pursuant to this Code section shall be in addition to any other appropriate civil or criminal penalties.

(b) Any person that suffers injuries or damages as a result of the unlawful practice of immigration assistance shall have a cause of action against the person or entity that provided the unlawful immigration assistance.

(c) The Secretary of State shall issue rules and regulations not inconsistent with this chapter for the implementation, administration, and enforcement of this chapter. (Code 1981, § 43-20A-7, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.)

43-20A-8. Maintaining documents.

(a) The Secretary of State shall maintain all documents filed with the Secretary of State pursuant to this chapter in their original form or by copy.

(b) All documents filed with the Secretary of State pursuant to a subpoena, an order, or a notice to produce issued by the Secretary of State or any records or documents produced relating to an investigation pursuant to Code Section 43-20A-15 may be destroyed by order of the Secretary of State once the investigative file is closed, if a demand for return is not made by the person producing such records at the time he, she, or it produces the records.

(c) Any reproduction of any original writing or record filed with, or maintained by, the Secretary of State, or other filing depository designated by the Secretary of State, shall be deemed to have been made in the regular course of business. Such reproduction shall be subject to certification.

(d) All immigration assistance providers who are licensed or required to be licensed with the Secretary of State shall preserve records documenting compliance pursuant to this chapter for at least three years from the date such records were produced. Immigration assistance providers shall preserve client records that contain certain necessary information in a manner to be determined by the Secretary of State. Such records shall be subject to reasonable periodic or special inspections by the Secretary of State. An inspection may be made at any time and without prior notice. The Secretary of State may copy and remove any record the Secretary of State reasonably considers necessary or appropriate to conduct the inspection. (Code 1981, § 43-20A-8, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.)

43-20A-9. Obligation of service provider to provide notice of pending disciplinary, administrative, civil, or criminal action.

(a) Any immigration assistance provider shall report in writing immediately to the Secretary of State if:

(1) He or she has been made or is the subject of any disciplinary, administrative, civil, or criminal action; and

(2) He or she has been served in any civil complaint or arbitration filed alleging fraud or any violation of any local, state, or federal law.

(b) The immigration assistance provider shall provide to the Secretary of State a copy of any notice, order, pleading, indictment, accusation, or similar legal document relating to an action subject to subsection (a) of this Code section that he or she has in his or her possession. (Code 1981, § 43-20A-9, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.)

43-20A-10. Fees.

The Secretary of State shall be authorized to charge a license fee, license renewal fee, or similar fee and may establish the amount of the

fee to be charged. Each fee shall be reasonable and shall be determined in such a manner that the total amount of fees charged by the Secretary of State shall approximate the total of the direct and indirect costs to the state of the operations involved in the issuance of a license. Fees may be refunded for good cause, as determined by the Secretary of State. (Code 1981, § 43-20A-10, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.)

43-20A-11. Amendment of license application to account for events or developments after license granted.

Should material events or developments occur after a person has been granted a license pursuant to this chapter, such person shall amend the license application submitted pursuant to Code Section 43-20A-4 by adding statements of fact that developed, or became known, after the effective date of such application and by deleting statements of fact that, because of such developments, may be misleading. Such additions and deletions shall be filed with the Secretary of State not more than 30 days after their occurrence. (Code 1981, § 43-20A-11, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.)

43-20A-12. Service member.

(a) As used in this Code section, the term “service member” means an active duty member of the regular or reserve component of the United States armed forces, the United States Coast Guard, the Georgia National Guard, or the Georgia Air National Guard on ordered federal duty for a period of 90 days or longer.

(b) Any service member whose license issued pursuant to this chapter expires while such service member is serving on active duty outside the state shall be permitted to practice as an immigration assistance provider in accordance with such expired license and shall not be charged with a violation of this chapter related to practicing as an immigration assistance provider with an expired license for a period of six months from the date of his or her discharge from active duty or reassignment to a location within the state. Any such service member shall be entitled to renew such expired license without penalty within six months after the date of his or her discharge from active duty or reassignment to a location within the state. Such service member shall present to the Secretary of State either a copy of the official military orders or a written verification signed by the service member’s commanding officer in order for the Secretary of State to waive any charges. (Code 1981, § 43-20A-12, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.)

43-20A-13. Authority to employ investigators.

For the purposes of investigating violations of this chapter, the Secretary of State shall be authorized to employ investigators pursuant to Code Section 43-1-5. (Code 1981, § 43-20A-13, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.)

43-20A-14. Disclosure of information.

Notwithstanding the provisions of Code Section 43-1-19, the Secretary of State shall be authorized to provide to any lawful licensing authority of this or any other state, upon inquiry by such authority, information regarding a past or pending investigation of or disciplinary sanction against any applicant for licensure. Nothing in this chapter shall be construed to prohibit or limit the authority of the Secretary of State to disclose to any person or entity information concerning the existence of any investigation for unlicensed practice being conducted against any person who is neither licensed nor an applicant for licensure. (Code 1981, § 43-20A-14, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.)

43-20A-15. Formal order of investigation; authorized action; emergency order; notice requirements.

(a) The Secretary of State shall be authorized to issue a formal order of investigation. Such order shall commence an investigation to determine whether any person is in violation of this chapter or to aid in the enforcement of this chapter.

(b) The Secretary of State shall be authorized to take any administrative action authorized by law to enforce the provisions of this chapter. The Secretary of State shall be authorized to transmit a civil or criminal referral investigative report and evidence of violations of this chapter to any prosecuting attorney or to the Attorney General, who may, at his or her individual discretion, institute any necessary civil or criminal proceedings.

(c) Notwithstanding any other provision of this chapter, an emergency order pursuant to this Code section shall be effective on the date of issuance, provided that:

(1) The Secretary of State deems that the public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in the emergency order, in which case the order may be effective immediately pending proceedings, which shall be promptly instituted; or

(2) The order is expressly required, by a judgment or a statute, to be made without the right to a hearing or continuance of any type.

(d) Upon issuance of the notice and proposed order, pursuant to this Code section, the Secretary of State shall promptly serve each person subject to the order with a copy of the notice and proposed order. The order shall include a statement of any administrative sanctions that the Secretary of State will seek, a statement of the reasons for the order, and notice that, upon the request by any respondent named in the emergency order, a hearing will be promptly scheduled pursuant to the provisions of Code Sections 50-13-18 and 50-13-41. Hearings shall be conducted by the Office of State Administrative Hearings pursuant to Chapter 13 of Title 50. If a person subject to the order does not request from the Office of State Administrative Hearings a hearing within 30 days after the date of service of the notice and proposed order, the order shall become final as to that person by operation of law. If any person subject to the emergency order requests a hearing, or is ordered by the Secretary of State, after notice and opportunity for hearing has been served upon each person subject to the emergency order, the Secretary of State may modify, vacate, or extend the emergency order any time prior to a final determination. (Code 1981, § 43-20A-15, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.)

43-20A-16. Cause for disciplinary actions; disciplinary order a final order.

(a) The Secretary of State shall order the discipline, denial, suspension, or revocation of license issued pursuant to this chapter, if the Secretary of State finds that the order is in the public interest and that such person:

(1) Has filed an application for licensure with the Secretary of State which, as of its effective date or any date after filing in the case of an order denying effectiveness, contained a statement that was, in light of the circumstances under which it was made, false with respect to a material fact in the application;

(2) Has violated or failed to comply with any provisions of this chapter;

(3) Is the subject of an adjudication or determination, after notice and opportunity for hearing, within the last five years by any government agency or administrator of another state or a court of competent jurisdiction that the person has willfully violated the law of another state, but only if the acts constituting the violation of that state's law would constitute a violation of this chapter had the acts occurred in this state;

(4) Has been convicted of any felony in the courts of this state or any other state, territory, or country or in the courts of the United States; as used in this paragraph and paragraph (5) of this subsec-

tion, the term "felony" shall include any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere; and, as used in this paragraph, the term "conviction" shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;

(5) Within the last ten years has been convicted of a felony or misdemeanor involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States, the record of conviction being conclusive evidence of conviction, which the Secretary of State finds:

(A) Involves the taking of a false oath, the making of a false report, bribery, perjury, burglary, or conspiracy to commit any of the foregoing offenses;

(B) Arises out of the conduct of immigration assistance; or

(C) Involves the theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds;

(6) Is the subject of an order of the Secretary of State that denies, suspends, or revokes a license from such person other than a license issued pursuant to this chapter;

(7) Is the subject of any of the following orders which are effective at the time of the Secretary of State's order and were issued within five years before the Secretary of State's order:

(A) An order by an agency or administrator of another state, a foreign country, or the federal government, entered after notice and opportunity for hearing, that denies, suspends, or revokes a license from such person other than a license issued pursuant to this chapter;

(B) A United States Postal Service fraud order; or

(C) A cease and desist order entered after notice and opportunity for hearing by the Secretary of State or other state or federal authority;

(8) Is determined by the Secretary of State not to be qualified pursuant to this chapter;

(9) Violated or conspired to violate this chapter;

(10) Engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity;

(11) Has failed to cure any application deficiency within 30 days after being notified by the Secretary of State of a deficiency, but the

Secretary of State shall vacate an order pursuant to this paragraph when the deficiency is corrected, unless the applicant has abandoned the application;

(12) Has failed to comply with an order for child support as defined by Code Section 19-11-9.3. Notwithstanding the provisions of Chapter 13 of Title 50, the hearings and appeals procedures provided in Code Section 19-6-28.1 or 19-11-9.3, where applicable, shall be the only such procedures required under this subsection; or

(13) Has been found by the Secretary of State pursuant to notice by the Georgia Higher Education Assistance Corporation that the applicant for or holder of such license is a borrower in default who is not in satisfactory repayment status as defined in Code Section 20-3-295. Notwithstanding the provisions of Chapter 13 of Title 50, the hearings and appeals procedures provided in Code Section 20-3-295, where applicable, shall be the only such procedures required under this subsection.

(b) Prior to issuing an order pursuant to subsection (a) of this Code section, the Secretary of State shall consider:

- (1) How recently the conduct occurred;
- (2) The nature of the conduct and the context in which it occurred;
- (3) The degree of harm imposed upon others; and
- (4) Any other relevant conduct of the applicant.

(c) If the Secretary of State determines that a licensee is no longer in existence or acting as an immigration assistance provider, the subject of an adjudication of incapacity, subject to the control of a trustee, conservator, or guardian, or cannot reasonably be located, the Secretary of State may issue an order that cancels or terminates the license. The Secretary of State may reinstate a canceled or terminated license, with or without hearing, and may make the license retroactive.

(d) An order issued pursuant to subsection (a) of this Code section shall constitute a final order, shall be deemed to be in the public interest, and shall not be deemed to constitute findings of fact or conclusions of law related to other persons. The entry of such an order shall not be deemed to be a waiver or estoppel on the part of the Secretary of State from proceeding in individual actions against any persons who may have violated this chapter, nor shall such an order prevent the Secretary of State from bringing individual actions against any persons who have violated this chapter, if such violation was not known to the Secretary of State at the time the order was issued.

(e) An order is not a proceeding or enforcement action pursuant to Chapter 13 of Title 50. (Code 1981, § 43-20A-16, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.)

43-20A-17. Suspension of license for nonpayment, default, or breach of repayment or service obligation under certain educational loan or scholarship programs; terms of reinstatement.

The Secretary of State shall suspend a license issued pursuant to this chapter if reported to the Secretary of State for nonpayment or default or breach of a repayment or service obligation under any federal educational loan, loan repayment, or service conditional scholarship program. Prior to a suspension, the licensee shall be entitled to notice of the Secretary of State's intended action and opportunity to appear before the Secretary of State according to procedures set forth by the Secretary of State. A suspension of a license pursuant to this Code section shall not be a contested case under Chapter 13 of Title 50. A license suspended pursuant to this Code section shall not be reinstated or reissued until the person arranges for a written release to be issued by the reporting agency directly to the Secretary of State stating that the person is making payments on the loan or satisfying the service requirements in accordance with an agreement approved by the reporting agency. If such person has continued to meet all other requirements for licensure during the period of suspension, reinstatement of the license shall be automatic upon receipt of the notice and payment of any reinstatement fee which the Secretary of State may impose. (Code 1981, § 43-20A-17, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.)

43-20A-18. Cease and desist order.

(a) The Secretary of State may issue a cease and desist order prohibiting a person from violating the provisions of this chapter by engaging in the practice of immigration assistance without a license issued pursuant to this chapter. Such cease and desist order shall become effective immediately upon signature of the Secretary of State and proper notice pursuant to this chapter.

(b) The violation of any order issued pursuant to subsection (a) of this Code section shall subject such person violating the order to further proceedings before the Secretary of State, and the Secretary of State shall be authorized to impose a civil penalty not to exceed \$500.00 for each transaction constituting a violation thereof. Such civil penalty shall be in addition to any other fines and penalties subject to committing a violation pursuant to this subsection. Each day that a person practices in violation of this subsection shall constitute a separate violation.

(c) Nothing in this Code section shall be construed to prohibit the Secretary of State from bringing remedies otherwise available by statute without first seeking a cease and desist order in accordance

with the provisions of this Code section. (Code 1981, § 43-20A-18, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.)

43-20A-19. Notice of opportunity for hearing.

(a) Where the Secretary of State has issued any order to discipline, deny, suspend, or revoke a license of an applicant or person licensed pursuant to this chapter, he or she shall promptly send to the respondent to such order a notice of opportunity for hearing. Before entering an order refusing to issue a license pursuant to this chapter to any person and after the entering of any order for revocation or suspension, the Secretary of State shall promptly send to such person a notice of opportunity for hearing.

(b) Notices of opportunity for hearing shall be served personally by investigators appointed by the Secretary of State, sent by registered or certified mail or statutory overnight delivery, return receipt requested, to the addressee's business mailing address or residential address as shown on the licensee's application, or directed for service to the sheriff of the county where such person resides or is found; and such notice shall state:

(1) The order which has issued or which is proposed to be issued;

(2) The ground for issuing such order or proposed order;

(3) A statement of the right of any party to subpoena witnesses and documentary evidence through the Secretary of State;

(4) That the person to whom such notice is sent will be afforded a hearing in accordance with the Code Sections 50-13-18 and 50-13-41; and

(5) Contested cases shall be heard by the Office of State Administrative Hearings pursuant to Chapter 13 of Title 50.

(c) If the Secretary of State does not receive a request for a hearing within the prescribed time, he or she may permit an order previously entered to remain in effect or may enter a proposed order. If a hearing is requested and conducted as provided in this Code section, the Secretary of State shall issue a written order which shall set forth his or her findings and conclusions of laws with respect to the matters involved. (Code 1981, § 43-20A-19, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.)

43-20A-20. Licensee required to notify licensing authority within 10 days of felony conviction.

Any individual licensed pursuant to this chapter who is convicted under the laws of this state, the United States, or any other state,

territory, or country of a felony shall be required to notify the appropriate licensing authority of the conviction within ten days of the conviction. (Code 1981, § 43-20A-20, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.)

43-20A-21. Criminal penalties for violations.

Any person who violates any provision of this chapter shall be guilty of a misdemeanor for a first offense and a high and aggravated misdemeanor for a second or subsequent offense committed within five years of a previous conviction for the same offense. (Code 1981, § 43-20A-21, enacted by Ga. L. 2008, p. 1112, § 15/HB 1055.)

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required for violators. — Those charged with offenses under former O.C.G.A. § 43-20A-4 (see now

O.C.G.A. § 43-20A-21) are to be fingerprinted. 2007 Op. Att'y Gen. No. 2007-1.

CHAPTER 21

OPERATORS OF HOTELS, INNS, AND ROADHOUSES

Article 1

Rights, Duties, and Liabilities of Innkeepers

Sec.

- 43-21-1. Definitions.
- 43-21-2. Depositories for hire.
- 43-21-3. Duty of innkeeper to receive guests.
- 43-21-3.1. Notice of termination of occupancy by innkeeper.
- 43-21-3.2. Written statement of period of occupancy signed by guest; rights of innkeeper and guest under contract.
- 43-21-4. Innkeeper as depository for hire; rules governing liability.
- 43-21-5. Attachment of lien on property of guests or their agents; priorities.
- 43-21-6. Enforcement of lien created by Code Section 43-21-5.
- 43-21-7. Checks or receipts for baggage.
- 43-21-8. Liability of innkeeper for stolen goods.
- 43-21-9. Acts constituting entrustment of property to innkeeper.
- 43-21-10. Deposit of valuables by guest with innkeeper.
- 43-21-11. Limitation on liability of innkeeper when valuables deposited with him.
- 43-21-12. Presumption of failure of innkeeper to exercise extraordinary diligence upon loss of entrusted property; defenses; limitation on liability.
- 43-21-13. Defrauding innkeeper.
- 43-21-14. Proof of intent to defraud.
- 43-21-15. Posting copies of law as to fraud.
- 43-21-16. Charging of excessive rates

Sec.

during 1996 Olympic Games; penalties; automatic repeal [Repealed].

Article 2

Sanitary Regulations for Hotels and Inns

- 43-21-30. Bed linens.
- 43-21-31. Screens on doors and windows.
- 43-21-32. Closets and restrooms.
- 43-21-33. Penalty.

Article 3

Roadhouses and Public Dance Halls

- 43-21-50. License requirement.
- 43-21-51. Application for license.
- 43-21-52. Term of licenses; fees; engaging in business under an expired license.
- 43-21-53. License fee as supplemental to other licenses and taxes.
- 43-21-54. Revocation of license after conviction for violation of article; barring of issuance of new license after revocation.
- 43-21-55. Furnishing list of employees to sheriff; notice of change of ownership.
- 43-21-56. Registration of guests; maintaining register.
- 43-21-57. Injunctions.
- 43-21-58. Authority of municipality to adopt provisions of article for establishments located in municipality.
- 43-21-59. Applicability of article.
- 43-21-60. Supplemental nature of article.
- 43-21-61. Occupying rooms for immoral purposes.
- 43-21-62. Penalty.

Cross references. — Authority of Safety Fire Commissioner to promulgate rules and regulations regarding fire hazards in hotels, or apartment houses,

§ 25-2-19. Regulation of tourist courts, T. 31, C. 28. County and municipal excise taxes on rooms, lodgings, and accommodations, § 48-13-50 et seq.

JUDICIAL DECISIONS

Cited in *Copeland v. Leathers*, 206 Ga. 280, 56 S.E.2d 530 (1949); *Summer v. Hyatt Corp.*, 153 Ga. App. 684, 266 S.E.2d 333 (1980); *Truett v. Morgan*, 153 Ga. App.

778, 266 S.E.2d 557 (1980); *Davis v. Garden Servs., Inc.*, 155 Ga. App. 34, 270 S.E.2d 228 (1980).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 39 Am. Jur. 2d, Health, §§ 1 et seq., 26 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq. New Topic Service, Americans with Disabilities Act, § 615 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 39A C.J.S., Health and Environment, §§ 3 et seq., 37 et seq., 48 et seq. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Liability of innkeeper for interference with guest, 17 ALR 139.

What constitutes a hotel or inn, 19 ALR 517; 53 ALR 988.

What constitutes a boarding house, 19 ALR 538.

Constitutionality of statute in relation to hotel rates or charges, 19 ALR 641.

Status and rights of one renting room in club, 32 ALR 1016.

Tax or license fee in respect of dancing or other entertainment provided in connection with service of refreshments, 142 ALR 572.

Relation of innkeeper and guest as affected by payment for accommodations by week, month, or the like, 145 ALR 363.

Discrimination as between restaurants or eating places in statutes or ordinances respecting them, 169 ALR 976.

Maintenance or regulation by public authorities of tourist or trailer camps, motor courts, or motels, 22 ALR2d 774.

Tourist or trailer camp, motor court or motel, as nuisance, 24 ALR2d 571.

Liability of innkeeper for injury to guest using hall or similar passageway, 27 ALR2d 822.

Liability of innkeeper for injury by object thrown or falling because of conduct of guest, 74 ALR2d 1241.

Liability of hotel, motel, or similar establishment for damage to or loss of guest's automobile left on premises, 52 ALR3d 433.

Liability of hotel or motel operator for injury or death resulting to guest from defects in furniture in room or suite, 91 ALR3d 483.

ARTICLE 1

RIGHTS, DUTIES, AND LIABILITIES OF INNKEEPERS

43-21-1. Definitions.

As used in this article, the term:

(1) "Guest" means a person who pays a fee to the keeper of an inn for the purpose of entertainment at that inn.

(2) "Inn" means all taverns, hotels, and houses of public general entertainment for guests. (Orig. Code 1863, §§ 2093, 2095; Code 1868, §§ 2088, 2090; Code 1873, §§ 2114, 2116; Code 1882, §§ 2114, 2116; Civil Code 1895, §§ 2932, 2934; Civil Code 1910, §§ 3503, 3507; Code 1933, § 52-101.)

JUDICIAL DECISIONS

Liability for baggage commences at time of delivery to hotel porter at depot. — Traveler who is met at a depot by the porter of a hotel, who indicates a conveyance by which the traveler may go to the hotel, becomes the guest of the hotel so far as to render the proprietor liable for safe-keeping of the traveler's baggage or baggage check delivered to the porter; such liability commences from time of delivery to porter. *Coskery v. Nagle*, 83 Ga. 696, 10 S.E. 491 (1889).

Persons not paying fee for room are not guests. — Trial court erred by assuming that the defendants had a continuing expectation of privacy in a hotel room because a guest services agent had the authority to evict the defendants from the room once the agent learned that the

defendants had checked into the hotel using a fraudulent credit card, and because the defendants had obtained the room through a fraudulent credit card that would not be honored by the credit card company, the defendants were not paying a fee for the room and were not guests within the meaning of O.C.G.A. § 43-21-1(1); therefore, the defendants could be evicted from the room for cause, and if the defendants were being evicted from the hotel for cause, under O.C.G.A. § 43-21-3.1(b), the defendants were not entitled to notice of the eviction. *State v. Delvechio*, 301 Ga. App. 560, 687 S.E.2d 845 (2009).

Cited in *World Trade Bus., Inc. v. Amit, Inc.*, 239 Ga. App. 383, 521 S.E.2d 40 (1999).

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hotels, Motels and Restaurants, § 25 et seq.

C.J.S. — 43A C.J.S., Inns, Hotels and Eating Places, § 6 et seq.

ALR. — Relation of innkeeper and guest as affected by payment for accommodation by week, month, or the like, 12 ALR 261; 145 ALR 363.

Improper motive or purpose in going to

hotel as affecting one's status as guest, or invitee of a guest, for purpose of determining degree of care owed by proprietor, 16 ALR 1388.

Liability of innkeeper for indignity to one occupying room without being registered, 29 ALR 481.

What constitutes a hotel or inn, 53 ALR 988.

43-21-2. Depositories for hire.

Persons entertaining only a few individuals, or simply for the accommodation of travelers, are not innkeepers but are depositories for hire and are bound to ordinary diligence. (Orig. Code 1863, § 2100; Code 1868, § 2095; Code 1873, § 2121; Code 1882, § 2121; Civil Code 1895, § 2939; Civil Code 1910, § 3512; Code 1933, § 52-102.)

RESEARCH REFERENCES

ALR. — Justification of guest in leaving hotel or boarding house before expiration of contract, 10 ALR 127. What constitutes a hotel or inn, 53 ALR 988.

43-21-3. Duty of innkeeper to receive guests.

An innkeeper who advertises himself as such is bound to receive as guests, so far as he can accommodate them, all persons of good character who desire accommodation and who are willing to comply with his rules. (Orig. Code 1863, § 2100; Code 1868, § 2095; Code 1873, § 2121; Code 1882, § 2121; Civil Code 1895, § 2939; Civil Code 1910, § 3512; Code 1933, § 52-103.)

JUDICIAL DECISIONS

Valid claims for damages for failure to provide lodging. — Based on the innkeeper's refusal to provide lodging for the disabled individual and the individual's service dog, the individual's proposed amended complaint stated valid claims for damages under O.C.G.A. §§ 30-4-2 and 43-21-3; the amendment was not futile, and leave to amend pursuant to Fed. R. Civ. P. 15(a) was granted. *Amick v. BM & KM, Inc.*, 275 F. Supp. 2d 1378 (N.D. Ga. 2003).
Cited in *Walker v. State*, 220 Ga. 415, 139 S.E.2d 278 (1964); *Brown v. Hilton Hotels Corp.*, 133 Ga. App. 286, 211 S.E.2d 125 (1974).

RESEARCH REFERENCES

ALR. — Improper motive or purpose in going to hotel as affecting one's status as guest, or invitee of a guest, for purpose of determining degree of care owed by proprietor, 16 ALR 1388.
 Exclusion of person (for reason other than color or race) from place of public entertainment or amusement, 1 ALR2d 1165.
 Punitive damages for wrongful ejection or rejection of guest from hotel or restaurant, 14 ALR2d 715.
 Civil rights: actionability under state statutes of discrimination because of complaining party's association with persons of different race, color, or the like, 35 ALR3d 859.
 Hotel or innkeeper's liability for refusal to honor reservation, 58 ALR3d 369.
 Recovery of damages as remedy for wrongful discrimination under state or local civil rights provisions, 85 ALR3d 351.
 What constitutes private club or association not otherwise open to public that is exempt from state civil rights statute, 83 ALR5th 467.

43-21-3.1. Notice of termination of occupancy by innkeeper.

(a) Whenever the keeper of a hotel, apartment hotel, boarding house, inn, or other accommodations furnished on a day-to-day or weekly basis wishes to terminate the occupancy of a guest for reasons other than those described in subsection (b) of this Code section, the keeper shall give notice of such intention to the guest. The period of time to be specified in the notice as to when the occupancy will be declared

terminated by the keeper shall be equal to the period of time for which occupancy is paid for by the guest and accepted by the keeper.

(b) The notice requirement of subsection (a) of this Code section shall not apply to a termination of occupancy for cause, such as failure to pay sums due, failure to abide by rules of occupancy, failure to have or maintain reservations, or other action by a guest. (Code 1981, § 43-21-3.1, enacted by Ga. L. 1986, p. 1212, § 1; Ga. L. 2008, p. 1032, § 13/HB 1168.)

JUDICIAL DECISIONS

Proper termination of hotel room rental agreement. — Contraband found by police officers in the defendant's hotel room was properly seized under the Fourth Amendment because the hotel manager had the authority to terminate the defendant's rental agreement without prior notice on the ground the defendant was selling drugs from the room and creating a disturbance at the hotel, and did so before the officers went to the room; thus, the defendant no longer had a reasonable expectation of privacy in the room. The officers had to determine if anyone was in the room before the clerk could lock the door and effectuate the eviction, and thus properly entered the room to search in places where someone could be hiding and properly seized marijuana found on a table in plain view as well as marijuana located under the bed. *Johnson v. State*, 285 Ga. 571, 679 S.E.2d 340 (2009).

Persons not paying fee for room are not guests and are not entitled to notice of eviction. — Trial court erred by assuming that the defendants had a continuing expectation of privacy in a hotel room because a guest services agent had the authority to evict the defendants from the room once the agent learned that the defendants had checked into the hotel using a fraudulent credit card, and because the defendants had obtained the room through a fraudulent credit card that would not be honored by the credit card company, the defendants were not paying a fee for the room and were not guests within the meaning of O.C.G.A. § 43-21-1(1); therefore, the defendants could be evicted from the room for cause, and if the defendants were being evicted from the hotel for cause, under O.C.G.A. § 43-21-3.1(b), the defendants were not entitled to notice of the eviction. *State v. Delvechio*, 301 Ga. App. 560, 687 S.E.2d 845 (2009).

43-21-3.2. Written statement of period of occupancy signed by guest; rights of innkeeper and guest under contract.

A written statement prominently setting forth in bold type the time period during which a guest may occupy an assigned room, when separately signed or initialed by the guest, is a valid nonassignable contract. At the expiration of such time period, the guest may be restrained from entering such room and any property of the guest may be removed by the innkeeper to a secure place where the guest may recover his or her property without liability to the innkeeper, except for damages to or loss of such property attributable to its removal. If a guest vacates his or her room prior to the date contained in the written statement, that guest shall not be liable for charges for the time after the room is vacated unless the guest has agreed otherwise before

occupying the room. (Code 1981, § 43-21-3.2, enacted by Ga. L. 1994, p. 498, § 1.)

43-21-4. Innkeeper as depository for hire; rules governing liability.

An innkeeper is a depository for hire; however, given the nature of his business, his liability is governed by more stringent rules, as are set out in this article. (Orig. Code 1863, § 2094; Code 1868, § 2089; Code 1873, § 2115; Code 1882, § 2115; Civil Code 1895, § 2933; Civil Code 1910, § 3506; Code 1933, § 52-104.)

JUDICIAL DECISIONS

History of limitation of innkeeper's liability. — See *Austin v. Berlin Supply Co.*, 12 Ga. App. 798, 78 S.E. 723 (1913).

Meaning of "stringent rules". — By "stringent rules", as used in this statute, means more stringent rules than other depositaries for hire. *Murchison v. Sergeant*, 69 Ga. 206, 47 Am. R. 754 (1882) (see O.C.G.A. § 43-21-4).

Innkeeper is not an insurer of guests' safety but needs only see that premises are reasonably safe. *Truett v. Morgan*, 153 Ga. App. 778, 266 S.E.2d 557 (1980).

Innkeeper must exercise ordinary care to keep premises safe for invitee

tenants. *Davis v. Garden Servs., Inc.*, 155 Ga. App. 34, 270 S.E.2d 228 (1980).

Innkeepers have lien on debtor's personalty unless voluntarily surrendered. — Policy of law as to innkeepers, boardinghouse keepers, and all pawnees and depositaries for hire is that they shall have a lien on personalty deposited or pawned with them until they are paid for their services, but that they lose such lien by voluntary surrender to the debtor of the property on which the lien is claimed. *Turner v. Priest*, 48 Ga. App. 109, 171 S.E. 881 (1933).

Cited in *Traylor v. Hyatt Corp.*, 122 Ga. App. 633, 178 S.E.2d 289 (1970).

RESEARCH REFERENCES

ALR. — Justification of guest in leaving hotel or boarding house before expiration of contract, 10 ALR 127.

Liability of innkeeper for loss or damage to property of a guest resulting from fire, 63 ALR2d 495.

Liability of innkeeper, restaurateur, or tavern keeper for injury occurring on or about premises to guest or patron by person other than proprietor or his servant,

70 ALR2d 628; 28 ALR4th 80; 43 ALR4th 281.

Liability of hotel, motel, or similar establishment for damage to or loss of guest's automobile left on premises, 52 ALR3d 433.

Liability of hotel or motel operator for injury or death resulting to guest from defects in furniture in room or suite, 91 ALR3d 483.

43-21-5. Attachment of lien on property of guests or their agents; priorities.

The keeper of every inn, boarding house, lodging house, and eating house shall have a lien on all furniture, baggage, wearing apparel, and other property brought into such inn, boarding house, lodging house, or eating house by any guest or patron of the same who has title to such

property, or by an agent who has legally acquired possession of such property for the purpose of dealing therewith for the benefit of the owner and in and about the business of the owner, to secure the payment by such guest or patron of all sums due for food, lodging, or other accommodation. The lien shall attach in all cases where a liability has been created without regard to the time of furnishing such food, lodging, or other accommodation and shall be superior to other liens except liens for taxes, liens for purchase money or retention of title of record, special liens of landlords for rent, liens of laborers, and all general liens of which the keeper of such inn, boarding house, lodging house, or eating house had actual notice or constructive notice before the property claimed to be subject was brought into such inn, boarding house, lodging house, or eating house. (Orig. Code 1863, § 2101; Code 1868, § 2096; Ga. L. 1873, p. 42, § 13; Code 1873, §§ 1986, 2122; Code 1882, §§ 1986, 2122; Civil Code 1895, §§ 2810, 2940; Civil Code 1910, §§ 3360, 3513; Ga. L. 1923, p. 101, § 1; Code 1933, § 52-105.)

Cross references. — Liens generally, § 44-14-320 et seq.

JUDICIAL DECISIONS

State action as to enforcement. — When the sole action attributable to the state is the General Assembly's enactment of statutes announcing the circumstances under which the courts of this state will not interfere with the private enforcement of innkeepers' liens, there is no violation of due process rights. *Evans v. Harley Hotels, Inc.*, 253 Ga. 53, 315 S.E.2d 896, appeal dismissed, 469 U.S. 803, 105 S. Ct. 58, 83 L. Ed. 2d 9 (1984).

Lien given to innkeepers and boardinghouse keepers is not created by contract, but by law. *Turner v. Priest*, 48 Ga. App. 109, 171 S.E. 811 (1933).

Provisions strictly construed as to boardinghouse keepers. — Statutes giving to boardinghouse keepers a lien on the goods of their boarders and the means to enforce the lien are in derogation of common law and should be strictly construed. *Turner v. Priest*, 48 Ga. App. 109, 171 S.E. 881 (1933).

Methods of enforcing boardinghouse keeper's lien. — Lien of a boardinghouse keeper under former Civil Code 1910, §§ 3360 and 3513 (see O.C.G.A. § 43-21-5) may be enforced as provided in former Civil Code 1910, § 3368 (see

O.C.G.A. § 43-21-6), by selling the property at public outcry after giving proper notice to lienee, or as provided in former Civil Code 1910, § 3366. *Turner v. Priest*, 48 Ga. App. 109, 171 S.E. 881 (1933).

Innkeepers have lien on guests' personality until paid. — Policy of law as to innkeepers, boardinghouse keepers, and all pawnees and depositaries for hire is that they shall have a lien on personality deposited or pawned with them, and may retain possession of the chattels in opposition to the title of the owner, until they are paid for their services. *Turner v. Priest*, 48 Ga. App. 109, 171 S.E. 881 (1933); *Brown v. Harmon*, 59 Ga. App. 373, 1 S.E.2d 33 (1939).

If owner regains possession of property without fraud, lien is ended. *Turner v. Priest*, 48 Ga. App. 109, 171 S.E. 881 (1933).

Innkeeper's voluntary surrender of guest's property. — When a boardinghouse keeper or innkeeper voluntarily surrenders possession of a guest's property on which the keeper has a boardinghouse keeper's or innkeeper's lien for board due, the keeper thereby loses the lien thereon, and cannot afterwards retake the property. *Turner v. Priest*, 48 Ga.

App. 109, 171 S.E. 881 (1933); *Brown v. Harmon*, 59 Ga. App. 373, 1 S.E.2d 33 (1939).

Permitting guest to drive car away from premises as voluntary surrender. — Plaintiff never established nor attempted to establish a lien by retaining possession of property levied on, and if the plaintiff ever could have been considered as having possession of the property, the plaintiff voluntarily surrendered it by allowing the defendant to drive the automobile away from the plaintiff's premises. Thus, when plaintiff levied on the automobile, the automobile was not in plaintiff's possession, but was parked on a public street and was in the possession of the

defendant. *Brown v. Harmon*, 59 Ga. App. 373, 1 S.E.2d 33 (1939).

Abandoning boardinghouse as surrender of lien on property therein. — When a boardinghouse keeper abandoned the boardinghouse, leaving delinquent boarder in free possession of the boarder's goods, this constituted a voluntary surrender of the goods of the boarder on which the house keeper could claim a lien for money due for the furnishing of meals to the boarder's wife and child. *Turner v. Priest*, 48 Ga. App. 109, 171 S.E. 881 (1933).

Cited in *Walker v. State*, 220 Ga. 415, 139 S.E.2d 278 (1964).

RESEARCH REFERENCES

ALR. — Automobile as subject of innkeeper's lien, 56 ALR 1102.

43-21-6. Enforcement of lien created by Code Section 43-21-5.

For the enforcement of the lien created by Code Section 43-21-5, the keeper of the inn, boarding house, lodging house, or eating house claiming the lien may retain possession of the property against which the lien is claimed. At any time after 30 days after the person creating such debt or obligation has left the inn, boarding house, lodging house, or eating house, if the debt or obligation is still unpaid, the innkeeper may sell at public auction at the office of the inn, boarding house, lodging house, or eating house where such lien is claimed, to the highest bidder for cash, any and all property subject to such lien, without any further process being necessary. The proceeds of such sale shall be applied, first, to the payment of the expense of such sale; second, to the reduction or discharge of the debt or obligation due to the inn, boarding house, lodging house, or eating house; and any surplus remaining shall be held subject to the demand of the person creating such debt or obligation, provided that such sale shall be advertised by written or printed posters at the office of the inn, boarding house, lodging house, or eating house and at the courthouse door of the county in which the inn, boarding house, lodging house, or eating house is located for at least ten days before such sale. The advertisement shall specify the time and place of sale. The keeper of the inn, boarding house, lodging house, or eating house shall give the owner or agent, or both, written notice by registered or certified mail or statutory overnight delivery addressed to him at his last known address at least ten days prior to the sale, notifying him of the time and place of sale and of the amount claimed against him. Any surplus proceeds of the sale, after payment of

the amount claimed against such owner or agent and the cost of sale, if not claimed by the owner or agent within 12 months after the sale, shall be turned over to the board of education of the county in which the sale occurred for educational purposes. (Ga. L. 1873, p. 42, § 17; Code 1873, § 1992; Ga. L. 1880-81, p. 63, § 4; Code 1882, § 1992; Civil Code 1895, § 2818; Civil Code 1910, § 3368; Ga. L. 1923, p. 101, § 2; Code 1933, § 52-106; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this

Code section is applicable with respect to notices delivered on or after July 1, 2000.

JUDICIAL DECISIONS

State action as to enforcement. — When the sole action attributable to the state is the General Assembly's enactment of statutes announcing the circumstances under which the courts of this state will not interfere with the private enforcement of innkeepers' liens, there is no violation of due process rights. *Evans v. Harley Hotels, Inc.*, 253 Ga. 53, 315 S.E.2d 896, appeal dismissed, 469 U.S. 803, 105 S. Ct. 58, 83 L. Ed. 2d 9 (1984).

When the hotel management sought to collect for long distance calls from a room, it was held that an innkeeper may retain possession of any belongings which were left in a room by an indebted guest under O.C.G.A. § 43-21-6. *Hall v. State*, 180 Ga. App. 210, 348 S.E.2d 736 (1986).

Methods of enforcing boardinghouse keeper's lien. — Lien of a boardinghouse keeper under former Civil Code 1910, §§ 3360 and 3513 (see O.C.G.A. § 43-21-5) may be enforced by selling property at public outcry after giving to lienor proper notice, or as provided in former Civil Code 1910, § 3366 (see O.C.G.A. § 44-14-550). *Turner v. Priest*, 48 Ga. App. 109, 171 S.E. 881 (1933).

Lien lost as to personally voluntarily surrendered to guest or owner. — Lien in favor of an innkeeper or boardinghouse keeper consists in the keeper's right to retain possession of chattels in opposition to title of the owner until the charge

respecting them is paid, and if possession is voluntarily surrendered, without fraud, to the guest or owner, lien is at an end, and the innkeeper or boardinghouse keeper cannot thereafter retake the property. *Turner v. Priest*, 48 Ga. App. 109, 171 S.E. 881 (1933); *Brown v. Harmon*, 59 Ga. App. 373, 1 S.E.2d 33 (1939).

Permitting guest to drive car off premises as surrender of lien thereon. — Plaintiff never established nor attempted to establish a lien by retaining possession of property levied on, and if the plaintiff ever could have been considered as having possession of the property, the plaintiff voluntarily surrendered the property by allowing the defendant to drive the automobile away from the plaintiff's premises, and when the automobile was levied on, the property was not in the plaintiff's possession, but was parked on the public street and was in possession of the defendant as recited. *Brown v. Harmon*, 59 Ga. App. 373, 1 S.E.2d 33 (1939).

Abandoning boardinghouse as surrender of lien on property therein. — When a boardinghouse keeper abandoned the boardinghouse, leaving delinquent boarder in free possession of the boarder's goods, this constituted voluntary surrender of goods of the boarder on which the house keeper could claim a lien for money due for furnishing meals to the boarder's wife and child. *Turner v. Priest*, 48 Ga. App. 109, 171 S.E. 881 (1933).

RESEARCH REFERENCES

ALR. — Automobile as subject of innkeeper's lien, 56 ALR 1102.

43-21-7. Checks or receipts for baggage.

(a) A keeper of an inn or other house of public entertainment for travelers shall give receipts or checks for all baggage delivered to such inn or house of entertainment when requested to do so by the guest owning the baggage. Such keeper shall not make any additional charge for receipting for, checking, or keeping such baggage while the owner remains a guest of the house.

(b) Any person who violates this Code section shall be guilty of a misdemeanor. (Ga. L. 1864-65, p. 61, § 1; Code 1873, § 2123; Code 1882, § 2123; Civil Code 1895, § 2941; Penal Code 1895, § 603; Civil Code 1910, § 3514; Penal Code 1910, § 634; Code 1933, §§ 52-107, 52-9901.)

RESEARCH REFERENCES

ALR. — Authority of clerk or other employee to waive innkeeper's regulation as to baggage or valuables, 56 ALR 316.

43-21-8. Liability of innkeeper for stolen goods.

An innkeeper shall exercise extraordinary diligence in preserving the property entrusted to his care by his guests, provided that, if the loss of such entrusted property occurs through theft and if the guest has complied with all reasonable rules of the inn, the innkeeper shall be liable as an insurer of the stolen property. (Orig. Code 1863, § 2096; Code 1868, § 2091; Code 1873, § 2117; Code 1882, § 2117; Civil Code 1895, § 2935; Civil Code 1910, § 3508; Code 1933, § 52-108.)

JUDICIAL DECISIONS

At common law an innkeeper was insurer of goods of a guest, and could only limit liability by express contract or notice. *Murchison v. Sergeant*, 69 Ga. 206, 47 Am. R. 754 (1882).

Distinction between liability as to thefts and other losses. — Proper construction of former Civil Code 1910, § 3508 (see O.C.G.A. § 43-21-8) was as follows: when it is shown that property of a guest was stolen while in custody of an innkeeper, and the guest has complied

with all reasonable rules of the inn, liability of the innkeeper is that of an insurer. In all other cases of loss, the innkeeper may excuse oneself by showing that loss was due to negligence or fault of the guest personally, or occurred after exercise by innkeeper of extraordinary diligence. By former Civil Code 1910, § 3508 (see O.C.G.A. § 43-21-12), it was provided that in case of loss the presumption is want of extraordinary diligence by the landlord as provided in former Civil Code

1910, § 3508. *Austin v. Berlin Supply Co.*, 12 Ga. App. 798, 78 S.E. 723 (1913).

Construed with former Code 1873, § 2119 (see O.C.G.A. § 43-21-10), former Code 1873, § 2117 (see O.C.G.A. § 43-21-8) required that reasonable rules be posted. *Murchison v. Sergeant*, 69 Ga. 206, 47 Am. R. 754 (1882).

When liability attaches. — When a hotel keeper sends a porter to the cars to receive baggage of persons traveling, and baggage is delivered to the porter, and the traveler becomes the guest of the hotel, liability of the innkeeper as such for the baggage begins on delivery to the porter and continues until redelivery to actual custody of the guest. *Sasseen & Whitaker v. Clark*, 37 Ga. 242 (1867); *Coskery v. Nagle*, 83 Ga. 696, 10 S.E. 491 (1889).

When liability terminates. — If the porter of the innkeeper takes charge of baggage at the hotel to deliver the baggage at the cars for the guest, liability of the innkeeper continues until baggage is

delivered. It devolves on the innkeeper to show such facts as will discharge the innkeeper from liability on account of such baggage. *Sasseen & Whitaker v. Clark*, 37 Ga. 242 (1867).

Inn guest retains guest status when using restaurant facility on premises of hotel structure. *Summer v. Hyatt Corp.*, 153 Ga. App. 684, 266 S.E.2d 333 (1980).

Hotel may open unlocked items to determine owner. — It is not an unauthorized search for hotel management personnel, including security personnel, to open unlocked items found on their premises in an attempt to determine ownership so that lost or misplaced property can be returned to the proper owner. *Berger v. State*, 150 Ga. App. 166, 257 S.E.2d 8 (1979), cert. denied, 445 U.S. 927, 100 S. Ct. 1312, 63 L. Ed. 2d 759 (1980).

Cited in *Traylor v. Hyatt Corp.*, 122 Ga. App. 633, 178 S.E.2d 289 (1970).

RESEARCH REFERENCES

ALR. — Liability of innkeeper for property left by departing guest who intends to return, 22 ALR 1194.

What information must be given by a guest upon delivering articles into custody of innkeeper, 53 ALR 1048.

Liability of hotel company for loss of or damage to guest's baggage while being transported to or from hotel, 76 ALR 1106.

Construction, scope, and application of words descriptive of property in statute relating to liability of innkeeper to guest loss or damage to property, 115 ALR 1088.

Effect of notice limiting liability for valuables or effects of guest in hotel, 9 ALR2d 818.

Liability of hotel, motel, or similar establishment for damage to or loss of guest's automobile left on premises, 52 ALR3d 433.

Construction and application of terms "jewelry" and "personal ornaments" as used in statute limiting innkeeper's liability for loss or damage to guest's property, 88 ALR3d 979.

43-21-9. Acts constituting entrustment of property to innkeeper.

It shall not be necessary to show actual delivery of property to the innkeeper before such property shall be deemed to have been entrusted to the innkeeper. Depositing goods in a public room set apart for such articles or leaving them in the room of the guest shall be a delivery to the innkeeper. However, if the guest shall deliver his goods to a servant under special charge to him to keep the same, the innkeeper shall not be liable therefor. (Orig. Code 1863, § 2097; Code 1868, § 2092; Code 1873, § 2118; Code 1882, § 2118; Civil Code 1895, § 2936; Civil Code 1910, § 3509; Code 1933, § 52-109.)

JUDICIAL DECISIONS

Presumption of entrustment not applicable to strangers. — Expressions, “depositing goods in a public room set apart for such articles,” as used in this statute are to be understood as relating to such acts of a guest as distinguished from such acts by a mere intruder or stranger having no relation of guest to the innkeeper, and at no time establishing such a relation. *Brewer v. Caswell*, 132 Ga. 563, 64 S.E. 674, 131 Am. St. R. 216, 23 L.R.A. (n.s.) 1107, 16 Ann. Cas. 936 (1909) (see O.C.G.A. § 43-21-9).

Hotel may open unlocked items to determine owner. — It is not an unauthorized search for hotel management personnel, including security personnel, to open unlocked items found on their premises in an attempt to determine ownership so that the lost or misplaced property can be returned to the proper owner. *Berger v. State*, 150 Ga. App. 166, 257 S.E.2d 8 (1979), cert. denied, 445 U.S. 927, 100 S. Ct. 1312, 63 L. Ed. 2d 759 (1980).

RESEARCH REFERENCES

ALR. — Liability of innkeeper for property left by departing guest who intends to return, 22 ALR 1194.

Liability of hotel company for loss of or damage to guest's baggage while being transported to or from hotel, 76 ALR 1106.

Construction, scope, and application of

words descriptive of property in statute relating to liability of innkeeper to guest loss or damage to property, 115 ALR 1088.

Liability of hotel, motel, or similar establishment for damage to or loss of guest's automobile left on premises, 52 ALR3d 433.

43-21-10. Deposit of valuables by guest with innkeeper.

The innkeeper may provide a safe or other place of deposit for valuable articles and, by posting a notice thereof, may require guests of the innkeeper to place such valuable articles therein or the innkeeper shall be relieved from responsibility for such articles. For all valuable articles placed by a guest with an innkeeper for safekeeping, the innkeeper shall give a receipt therefor to evidence the fact of such deposit. No guest shall recover from the innkeeper more than \$750.00 for loss of valuable articles deposited with the innkeeper for safekeeping unless such guest shall possess a receipt of the innkeeper for the valuable articles claimed to have been lost. (Orig. Code 1863, § 2098; Code 1868, § 2093; Code 1873, § 2119; Code 1882, § 2119; Civil Code 1895, § 2937; Civil Code 1910, § 3510; Ga. L. 1922, p. 52, § 1; Code 1933, § 52-110; Ga. L. 1984, p. 924, § 1.)

Cross references. — Deposits generally, § 44-12-90 et seq.

Law reviews. — For annual survey on

law of torts, see 43 Mercer L. Rev. 395 (1991).

JUDICIAL DECISIONS

Statute was not intended to be exhaustive as to reasonable rules which may be adopted by innkeepers. *Austin v.*

Berlin Supply Co., 12 Ga. App. 798, 78 S.E. 723 (1913) (see O.C.G.A. § 43-21-10).

Former Code 1873, §§ 2117 and 2120

(see O.C.G.A. §§ 43-21-8 and 43-21-12) must be construed in *pari materia* with former Code 1873, § 2119 (see O.C.G.A. § 43-21-10). *Murchison v. Sergeant*, 69 Ga. 206, 47 Am. R. 754 (1882).

Multiple notices sufficient to relieve innkeeper of liability. — Notice of the availability of a safe and the requirement that guests place valuables therein, to relieve the innkeeper of liability for the loss of such items, was sufficient since the notice was posted not only on the registration card, but also in the guest's room and behind the registration desk. *Kates v. Brunswick Motel Enters., Inc.*, 187 Ga. App. 875, 371 S.E.2d 686 (1988); *Chapparone v. First Florence Corp.*, 233 Ga. App. 546, 504 S.E.2d 761 (1998).

Notice on hotel register of place of deposit was not "posting" as required in this statute and was not sufficient. *Murchison v. Sergeant*, 69 Ga. 206, 47 Am. R. 754 (1882) (see O.C.G.A. § 43-21-10).

Effect of innkeeper's negligence after notice. — After notice was given by posting according to the requirements of this statute, an innkeeper was not liable for articles stolen from a guest's room because of negligence in failing to provide a suitable lock on the door of the guest's room, or in placing a fire escape in such manner to afford easy access to the room.

Jones v. Savannah Hotel Co., 141 Ga. 530, 81 S.E. 874, 51 L.R.A. (n.s.) 1168 (1914) (see O.C.G.A. § 43-21-10).

O.C.G.A. § 43-21-10 carves out no exception for losses occasioned by the negligence or intentional torts of the innkeeper's employees. Thus, if the innkeeper posts notice in accordance with the statute, it is not liable for articles stolen from a guest's room even if the innkeeper's own employees were negligent in preventing the theft or were actually parties to the theft. *Gooden v. Day's Inn*, 196 Ga. App. 324, 395 S.E.2d 876 (1990), cert. denied, 196 Ga. App. 324, 395 S.E.2d 876 (1990).

Statute limited liability of hotel unless guest complied with requirements. *Holzer Watch Co. v. Dinkler Hotel Corp.*, 418 F.2d 241 (5th Cir. 1969) (see O.C.G.A. § 43-21-10).

Liability for personal effects of reasonable value despite notice. — Even if notice had been published to a guest according to the law of this statute to deposit valuables in another place, it would not apply to a reasonable amount of traveling money and a watch of reasonable value. *Murchison v. Sergeant*, 69 Ga. 206, 47 Am. R. 754 (1882) (see O.C.G.A. § 43-21-10).

Cited in *Koch v. Block Corp.*, 423 F.2d 700 (5th Cir. 1970).

RESEARCH REFERENCES

ALR. — Liability of innkeeper for property left by departing guest who intends to return, 22 ALR 1194.

What information must be given by a guest upon delivering articles into custody of innkeeper, 53 ALR 1048.

Authority of clerk or other employee to waive innkeeper's regulation as to baggage or valuables, 56 ALR 316.

Liability of hotel company for loss of or damage to guest's baggage while being transported to or from hotel, 76 ALR 1106.

Construction, scope, and application of words descriptive of property in statute relating to liability of innkeeper to guest loss or damage to property, 115 ALR 1088.

Place of posting, and contents of, notice by innkeeper as to safety receptacle for valuables of guest, necessary to comply with statutory provisions in that regard, 119 ALR 796.

Statutory limitations upon innkeeper's liability as applicable where guests' property is lost or damaged through innkeeper's negligence, 37 ALR3d 1276.

Liability of hotel or motel for guest's loss of money from room by theft or robbery committed by person other than defendant's servant, 28 ALR4th 120.

43-21-11. Limitation on liability of innkeeper when valuables deposited with him.

(a) No hotel, apartment hotel, or innkeeper shall be responsible in an amount in excess of \$1,000.00 for the loss or theft of any valuables, including cash, jewelry, etc., which are contained in a package, box, bag, or other container left with the hotel proprietor or innkeeper to be placed in the safe or other depository of the hotel or inn, provided that the liability of the hotel or innkeeper may be increased to an amount in excess of \$1,000.00 by a written contract entered into between the parties providing a greater liability; provided, further, that the contract shall not call for any additional cost to the guest.

(b) A notice containing the provisions of subsection (a) of this Code section shall be posted in a conspicuous place in all rooms of the hotel occupied by guests. (Ga. L. 1943, p. 313, § 1; Ga. L. 1984, p. 924, § 2.)

Cross references. — Liability of depositories for hire generally, § 44-12-92.

JUDICIAL DECISIONS

Statute spells out limitations on liability of hotel keepers whose guests place themselves within terms of these

statutory provisions (see O.C.G.A. Ch. 21, T. 43). *Koch v. Block Corp.*, 423 F.2d 700 (5th Cir. 1970) (see O.C.G.A. § 43-21-11).

RESEARCH REFERENCES

ALR. — Liability of hotel company for loss of or damage to guest's baggage while being transported to or from hotel, 76 ALR 1106.

Construction, scope, and application of words descriptive of property in statute relating to liability of innkeeper to guest loss or damage to property, 115 ALR 1088.

Effect of notice limiting liability for valuables or effects of guest in hotel, 9 ALR2d 818.

Statutory limitations upon innkeeper's liability as applicable where guests' property is lost or damaged through innkeeper's negligence, 37 ALR3d 1276.

Construction and application of terms "jewelry" and "personal ornaments" as used in statute limiting innkeeper's liability for loss or damage to guest's property, 88 ALR3d 979.

43-21-12. Presumption of failure of innkeeper to exercise extraordinary diligence upon loss of entrusted property; defenses; limitation on liability.

In case of loss of property entrusted by a guest to an innkeeper, it will be presumed that the innkeeper failed to exercise extraordinary diligence with regard to such property. Negligence or default by the guest, of which the loss is a consequence, shall be a sufficient defense. The liability of the innkeeper for loss of or injury to personal property placed by any guest under the innkeeper's care, other than valuable articles

which must be delivered to the innkeeper to be deposited in a safe or other place of deposit, shall not exceed the sum of \$1,000.00, provided that any guest may, at any time before loss, damage, or destruction of the guest's property, notify the innkeeper in writing that the property of the guest exceeds in value the sum of \$1,000.00 and shall, upon demand of the innkeeper, furnish the innkeeper a list or schedule of the same, with the value thereof, in which case the innkeeper shall be liable for the full value of such property in case of loss, damage, or destruction because of negligence on the innkeeper's part; provided, further, that the innkeeper shall post a copy of this Code section, printed in distinct type, on the inside of the door of the guest's room. The innkeeper may adopt reasonable regulations for the innkeeper's protection, and the publication of such rules to the innkeeper's guests shall bind them to comply therewith. (Orig. Code 1863, § 2099; Code 1868, § 2094; Code 1873, § 2120; Code 1882, § 2120; Civil Code 1895, § 2938; Civil Code 1910, § 3511; Ga. L. 1922, p. 52, § 2; Code 1933, § 52-111; Ga. L. 1984, p. 924, § 3.)

JUDICIAL DECISIONS

Statute intended to apply only to houses of public entertainment furnishing lodging to a guest. *Diplomat Restaurant, Inc. v. Townsend*, 118 Ga. App. 694, 165 S.E.2d 317 (1968) (see O.C.G.A. § 43-21-12).

Former Code 1882, § 2120 (see O.C.G.A. § 43-21-12) referred to reasonable regulations other than those connected with the safe and their publication because former Code 1873, § 2119 (see O.C.G.A. § 43-21-10) provided how notice to the guest of the safe, or other place of deposit, shall be given. *Murchison v. Sergeant*, 69 Ga. 206, 47 Am. R. 754 (1882).

Necessity for posting regulations. — Former Code 1882, § 2120 (see O.C.G.A. § 43-21-12) must be construed with former Code 1873, § 2119 (see O.C.G.A. § 43-21-10), and when so construed it was necessary to post regulations for guest's protection. *Murchison v. Sergeant*, 69 Ga. 206, 47 Am. R. 754 (1882).

Innkeeper is liable for losses in absence of regulation and notice. — When an innkeeper fails to adopt reasonable regulations for the innkeeper's own protection and to provide for due publication of such to guests, a guest who sustains a loss may recover therefor, unless guilty of negligence or default of which the

loss is a consequence. *Watson v. Loughran*, 112 Ga. 837, 38 S.E. 82 (1901).

Diligence required even after discovery of guest's negligence. — When the guest is guilty of negligence, the innkeeper will nevertheless be liable if after discovery of such negligence the innkeeper and through the innkeeper's servants do not exercise extraordinary diligence to prevent loss. *Watson v. Loughran*, 112 Ga. 837, 38 S.E. 82 (1901).

Contract purporting to further exculpate innkeeper is contrary to public interest and policy and cannot be enforced. *Ellerman v. Atlanta Am. Motor Hotel Corp.*, 126 Ga. App. 194, 191 S.E.2d 295 (1972).

Negligence is question for jury. — Whether given acts or omissions of a guest by whom a loss is sustained do or do not amount to such negligence on the guest's part as will constitute a sufficient defense to an action against a landlord for value of lost property is generally a question for the jury. *Watson v. Loughran*, 112 Ga. 837, 38 S.E. 82 (1901).

Cited in *Traylor v. Hyatt Corp.*, 122 Ga. App. 633, 178 S.E.2d 289 (1970); *Davidson v. Ramsby*, 133 Ga. App. 128, 210 S.E.2d 245 (1974); *Hicks v. Days Inns of Am., Inc.*, 183 Ga. App. 4, 357 S.E.2d 847 (1987).

RESEARCH REFERENCES

ALR. — Liability of hotel company for loss of or damage to guest's baggage while being transported to or from hotel, 76 ALR 1106.

Construction, scope, and application of words descriptive of property in statute

relating to liability of innkeeper to guest loss or damage to property, 115 ALR 1088.

Liability of innkeeper for loss or damage to property of a guest resulting from fire, 63 ALR2d 495.

43-21-13. Defrauding innkeeper.

Any person who, with intent to defraud, shall obtain food, lodging, or other accommodation at any hotel, inn, boarding house, or eating house, except when credit shall be given therefor by express agreement, shall be guilty of a misdemeanor. (Ga. L. 1910, p. 137, § 1; Code 1933, § 52-9903; Ga. L. 1957, p. 335, § 1.)

JUDICIAL DECISIONS

Cited in *Scott v. State*, 53 Ga. App. 61, 185 S.E. 131 (1936).

RESEARCH REFERENCES

ALR. — What constitutes a boarding house, 19 ALR 538.

43-21-14. Proof of intent to defraud.

Proof that food, lodging, or other accommodation was obtained by false pretense or by false or fictitious show or pretense of any baggage or other property, by such person obtaining such food, lodging, or other accommodation; or that such person absconded without paying or offering to pay for such food, lodging, or other accommodation; or that such person gave in payment for such food, lodging, or other accommodation any check or draft made payable at sight, on demand, or on a date not subsequent to the date when the same was drawn, which check or draft payment was refused on presentation; or that such person surreptitiously removed or attempted to remove therefrom his baggage or other property brought with him to such hotel, inn, boarding house, or eating house, without having paid for or having offered to pay for such food, lodging, or other accommodation so furnished him shall be prima-facie evidence of the fraudulent intent mentioned in Code Section 43-21-13. No person shall be convicted under Code Section 43-21-13 where there shall have been an agreement to delay payment for such food, lodging, or other accommodations until a date after such person shall have terminated his relation as a guest at such hotel, inn, boarding house, or eating house. (Ga. L. 1910, p. 137, § 2; Code 1933, § 52-9904.)

43-21-15. Posting copies of law as to fraud.

It shall be the duty of every hotel keeper, innkeeper, boarding house keeper, and eating house keeper to keep a copy of Code Sections 43-21-13 and 43-21-14 printed in distinct type, posted in the lobby, public waiting room, or that portion of his establishment most frequented by the guests thereof; and no conviction shall be had under this law until it shall be made to appear that such copy was posted, as above provided, in the hotel, inn, boarding house, or eating house, the owner or keeper of which shall claim to have been defrauded, at the time such food, lodging, or other accommodation was obtained. (Ga. L. 1910, p. 137, § 3; Code 1933, § 52-9905.)

43-21-16. Charging of excessive rates during 1996 Olympic Games; penalties; automatic repeal.

Repealed by Ga. L. 1994, p. 1364, § 1, effective December 31, 1996.

Editor's notes. — This Code section was based on Code 1981, § 43-21-16, enacted by Ga. L. 1994, p. 1364, § 1.

ARTICLE 2**SANITARY REGULATIONS FOR HOTELS AND INNS****RESEARCH REFERENCES**

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 39 Am. Jur. 2d, Health, §§ 1 et seq., 26 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S.,

Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 39A C.J.S., Health and Environment, §§ 3 et seq., 37 et seq., 48 et seq. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

43-21-30. Bed linens.

It shall be the duty of every hotel keeper or innkeeper to furnish clean bed linens, unused by any other person since the last laundering thereof, on all beds assigned to the use of any guest or patron of such inn or hotel. (Ga. L. 1910, p. 88, § 1; Code 1933, § 52-202.)

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hotels, Motels, and Restaurants, § 33.

C.J.S. — 43A C.J.S., Inns, Hotels, and Eating Places, §§ 7, 24.

ALR. — Justification of guest in leaving hotel or boarding house before expiration of contract, 10 ALR 127.

43-21-31. Screens on doors and windows.

It shall be the duty of every hotel keeper or innkeeper to screen properly, with wire, cloth, or gauze, the doors, windows, and other similar openings in the kitchen and dining room of such inn or hotel. (Ga. L. 1910, p. 88, § 2; Code 1933, § 52-203.)

43-21-32. Closets and restrooms.

It shall be the duty of every hotel keeper or innkeeper to keep the closets and restrooms used in connection with such inn or hotel in a clean and sanitary condition. (Ga. L. 1910, p. 88, § 3; Code 1933, § 52-204.)

RESEARCH REFERENCES

ALR. — Justification of guest in leaving hotel or boarding house before expiration of contract, 10 ALR 127.

Validity of statutes, ordinances, and regulations requiring the installation or maintenance of various bathroom facilities in dwelling units, 79 ALR3d 716.

Liability of hotel or motel operator for injury or death of guest or privy resulting from condition in plumbing or bathroom of room or suite, 93 ALR3d 253.

43-21-33. Penalty.

Any proprietor, lessee, manager, or agent of an inn or hotel covered by this article who is authorized to control the conditions of such inn or hotel and who violates any provision of this article shall be guilty of a misdemeanor. (Ga. L. 1910, p. 88, § 6; Code 1933, § 52-9902.)

JUDICIAL DECISIONS

Cited in *Geele v. State*, 202 Ga. 381, 43 S.E.2d 254 (1947).

RESEARCH REFERENCES

ALR. — Liability for personal injury by fire escape, 42 ALR 1111.

Validity of statutes, ordinances, and

regulations requiring the installation or maintenance of various bathroom facilities in dwelling units, 79 ALR3d 716.

ARTICLE 3

ROADHOUSES AND PUBLIC DANCE HALLS

Cross references. — Tourist courts,
§ 31-28-1 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S.,

Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

43-21-50. License requirement.

(a) Every person, firm, or corporation engaged in the business of operating, outside the corporate limits of any municipality in this state, a roadhouse, public dance hall, or any other similar establishment by whatever name called, where travelers, transient guests, or other persons are or may be lodged, or operating restaurants, cafes, or places where food or drinks, or both, are sold to be consumed at such places, shall, before engaging in such business, apply for and obtain a license from the county commissioners or from the judge of the probate court in the county in which such business is to be carried on.

(b) It shall be unlawful for any person, firm, or corporation to engage in any business described in this Code section without first obtaining a license therefor. Any person violating this Code section shall be guilty of a misdemeanor. (Ga. L. 1945, p. 326, §§ 1, 13.)

Cross references. — Powers of local governments to regulate retail sales of alcoholic beverages generally, § 3-3-2. Au-

thorization for and regulation of private clubs selling distilled spirits, T. 3, C. 7.

JUDICIAL DECISIONS

Cited in Copeland v. Leathers, 206 Ga. 280, 56 S.E.2d 530 (1949).

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hotels, Motels and Restaurants, § 25 et seq.

C.J.S. — 43A C.J.S., Inns, Motels and Eating Places, § 6 et seq.

ALR. — Validity of license tax or fee on show or place of amusement, 58 ALR 1340; 111 ALR 778.

Public regulation of dancing, dance halls, dancing schools, 60 ALR 173.

Right of one who acquires title to, or other interest in, real property to benefit

of a license previously issued by the public, permitting use of property for a specified purpose, 131 ALR 1339.

Tax or license fee in respect of dancing or other entertainment provided in connection with service of refreshment, 142 ALR 572.

Validity of statutory or other regulation of roadhouses and places of entertainment outside of incorporated cities and town, 145 ALR 757.

43-21-51. Application for license.

(a) Every person, firm, or corporation making application for a license to engage in the business described in Code Section 43-21-50 shall make application to the county commissioners or the judge of the probate court of the county in which such business is to be operated. The application shall contain:

(1) The name and residence of the applicant and the length of his residence within the state;

(2) The address and place for which such license is desired;

(3) The name of the owner of the premises upon which the business licensed is to be located;

(4) A statement that the applicant intends to carry on the business authorized by the license for himself or under his immediate supervision and direction; and

(5) A statement that such applicant is of good moral character and has never been convicted of a felony involving moral turpitude.

(b) The application prescribed in this Code section must be verified by the affidavit of the petitioner made before a notary public or other person duly authorized by law to administer oaths. If it appears from the statement of the applicant, or otherwise, that such applicant has been convicted of a felony involving moral turpitude, the license shall not be granted unless it shall appear to the satisfaction of the county commissioners or the judge of the probate court that the licensed premises will be operated in a lawful manner, in which case such official or officials may, in their discretion, issue such license. Before any such license shall be issued, the governing body of the county shall be satisfied that the statements required by this Code section are true. (Ga. L. 1945, p. 326, §§ 3, 4; Ga. L. 1986, p. 449, § 1.)

RESEARCH REFERENCES

ALR. — Validity, construction, and application of statutes or ordinances relating to inspection of food sold at retail, 127 ALR 322.

Liability of owner or occupant of premises to building or construction inspector coming upon premises in discharge of duty, 28 ALR3d 891.

43-21-52. Term of licenses; fees; engaging in business under an expired license.

Licenses issued under this article shall be renewed annually on or before June 1 of each year or at the date of engaging such business and shall expire on May 31 of each year; and license fees shall be for the full amount of the tax prescribed, regardless of the date such business is begun. Upon the expiration of a license, it shall be unlawful for any person, firm, or corporation to continue such business until a new license for the privilege of engaging in such business is applied for and obtained. (Ga. L. 1945, p. 326, § 12.)

43-21-53. License fee as supplemental to other licenses and taxes.

The license fee imposed pursuant to this article shall be in addition to all other licenses and taxes levied by law upon the business taxed. (Ga. L. 1945, p. 326, § 11.)

RESEARCH REFERENCES

ALR. — Validity of license tax or fee on show or place of amusement, 111 ALR 778.

43-21-54. Revocation of license after conviction for violation of article; barring of issuance of new license after revocation.

In addition to any penalty prescribed in this article for a violation of this article the court before whom such person is tried and where a conviction is had shall have the power to revoke the license to operate the establishments licensed under this article; and whenever any person, firm, or corporation has been so convicted, the court, if it shall appear that the premises were being operated in violation of the law with the knowledge, consent, or approval of the owner thereof, shall have the authority to prohibit the issuance of any similar license for such premises to any person for a term of one year after the revocation of the license. (Ga. L. 1945, p. 326, § 10.)

RESEARCH REFERENCES

ALR. — Refusal of amusement license or permit as subject to judicial review, 124 ALR 247.

Validity of statute or rule which makes

specified conduct or condition a ground for cancellation or suspension of license, irrespective of licensee's personal fault, 3 ALR2d 107.

43-21-55. Furnishing list of employees to sheriff; notice of change of ownership.

At any time upon request of the sheriff of the county in which such business is carried on, the operator of every establishment named in this article shall furnish the sheriff with a list of all employees who are employed by him in connection with the business; and, in every instance when such an operator goes out of business or there is a change of ownership or management thereof, such operator shall immediately file with the clerk of the county commissioners or with the judge of the probate court of the county in which such business is carried on a notice to this effect, giving the name and address of the purchaser or the new owner or manager thereof. (Ga. L, 1945, p. 326, § 5.)

43-21-56. Registration of guests; maintaining register.

Any person or persons occupying any room or rooms in a roadhouse, public dance hall, or any other similar establishment by whatever name called shall register or cause himself to be registered before occupying the same and, if traveling by motor vehicle, shall register at the same time the license plate of such motor vehicle and the manufacturer's name of such motor vehicle; and no person shall write or cause to be written or, if in charge of a register, knowingly permit to be written in any register in any of the establishments enumerated in this Code section, a name or designation other than the true name or names in ordinary use of the person registering or causing himself to be registered therein, or the true name of the manufacturer of such motor vehicle or the correct license plate and number thereof. Every person to whom a license is issued under this article shall provide a permanent register for the purposes set forth in this Code section. (Ga. L. 1945, p. 326, § 6.)

JUDICIAL DECISIONS

Cited in *Brooks v. State*, 129 Ga. App. 393, 199 S.E.2d 578 (1973).

RESEARCH REFERENCES

ALR. — Liability of innkeeper for indignity to one occupying room without being registered, 29 ALR 481.

43-21-57. Injunctions.

Upon application of any officer or citizen of the county wherein such establishment is located, the superior courts of the state are authorized to enjoin any licensee under this article from further operation of such business upon proof that such licensee has violated this article or upon proof that the licensee has forfeited his license; and the superior courts and the judges thereof shall likewise have authority to and shall enjoin, at the instance of any citizen, any person, firm, or corporation from further operation of such business without first securing the license provided for in this article. (Ga. L. 1945, p. 326, § 17A.)

JUDICIAL DECISIONS

O.C.G.A. § 43-21-57 constitutional although title of Act does not mention injunction. — Fact that no particular reference is made in the title of Ga. L. 1945, p. 326 (see O.C.G.A. Ch. 21, T. 43) to the penalty of injunction provided for in Ga. L. 1945, p. 326, § 17A (see O.C.G.A. § 43-21-57) did not render that section repugnant to the constitutional provision in Ga. Const. 1976, Art. III, Sec. VII, Para. IV (see Ga. Const. 1983, Art. III, Sec. V, Para. III). *Copeland v. Leathers*, 206 Ga. 280, 56 S.E.2d 530 (1949) (see O.C.G.A. § 43-21-57).

Injunctive relief provided for is entirely harmonious with main idea and purpose of Ga. L. 1945, p. 326. *Copeland v. Leathers*, 206 Ga. 280, 56 S.E.2d 530 (1949).

It is not required that owner or operator be in actual charge of register; if the owner's or the operator's agents, servants, or employees are in charge thereof and fail to secure from occupants of cabins or rooms the registration and information required by Ga. L. 1945, p. 326, § 6 (see O.C.G.A. § 43-21-56), the owner or operator is responsible therefor under former Code 1933, §§ 4-309 and 4-311 (see O.C.G.A. §§ 10-6-58 and 10-6-60). *Copeland v. Leathers*, 206 Ga. 280, 56 S.E.2d 530 (1949).

Statute did not authorize court to enjoin owner from selling such premises. *Copeland v. Leathers*, 206 Ga. 280, 56 S.E.2d 530 (1949) (see O.C.G.A. § 43-21-57).

43-21-58. Authority of municipality to adopt provisions of article for establishments located in municipality.

The governing body of any municipality shall have the authority to adopt any or all of the provisions of this article for application to any establishment which is located within the limits of such municipality and which, except for its location in such municipality, fits the description of those establishments mentioned in Code Section 43-21-50. (Ga. L. 1945, p. 326, § 15.)

43-21-59. Applicability of article.

This article shall not apply to hotels and inns within the definition of Code Sections 43-21-1 and 43-21-2 nor to persons who, incidental to their principal business or occupation, accept from time to time seasonal boarders in their private residences. (Ga. L. 1945, p. 326, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Georgia Center for Continuing Education pays no local hotel tax. — When the Georgia Center for Continuing Education is neither licensed by nor required to pay business or occupation taxes

to a city or county, the center is not subject to a hotel and motel tax imposed by those jurisdictions. 1975 Op. Att'y Gen. No. U75-39.

RESEARCH REFERENCES

ALR. — Status and rights of one renting room in club, 32 ALR 1016.

Civil rights: actionability under state statutes of discrimination because of com-

plaining party's association with persons of different race, color, or the like, 35 ALR3d 859.

43-21-60. Supplemental nature of article.

This article shall be supplemental to and not in derogation of any other law pertaining to the licensing and regulating of public dance halls, roadhouses, and similar businesses. (Ga. L. 1945, p. 326, § 16.)

RESEARCH REFERENCES

Am. Jur. 2d. — 73 Am. Jur. 2d, Statutes, § 1.

C.J.S. — 82 C.J.S., Statutes, §§ 289, 292, 293, 316.

43-21-61. Occupying rooms for immoral purposes.

(a) Any man or woman found occupying the same room in any establishment covered by this article for any immoral purpose or any man or woman falsely registering as, or otherwise representing themselves to be, husband and wife in any such establishment shall be guilty of a misdemeanor.

(b) Any operator or keeper of any establishment covered by this article who shall knowingly permit any man or woman to occupy any room in that establishment for any immoral purposes or who shall knowingly permit any man or woman to register falsely as husband and wife in such an establishment shall be guilty of a misdemeanor.

(c) Any person who shall knowingly persuade, induce, or entice, or cause to be persuaded, induced, or enticed, any female person to enter any establishment covered by this article for the purpose of prostitution

or debauchery or for any other immoral purpose shall be guilty of a misdemeanor. (Ga. L. 1945, p. 326, §§ 7-9.)

Cross references. — Prostitution generally, §§ 16-6-9, 16-6-10. Abatement of houses of prostitution, T. 41, C. 3. Invalidity of leases of houses, buildings, and other facilities for purposes of prostitution, § 44-7-18.

JUDICIAL DECISIONS

Cited in *Copeland v. Leathers*, 206 Ga. 280, 56 S.E.2d 530 (1949).

43-21-62. Penalty.

Unless another penalty is provided in this article or by the laws of this state, any person violating any of the provisions of this article shall be guilty of a misdemeanor. (Ga. L. 1945, p. 326, § 14.)

CHAPTER 21A

INDUSTRIAL HYGIENE, HEALTH PHYSICS, AND SAFETY PROFESSION RECOGNITION AND TITLE PROTECTION

Sec.		Sec.	
43-21A-1.	Short title.	43-21A-6.	Unfair business practices.
43-21A-2.	Purpose of chapter.	43-21A-7.	State or local government regulation of the practice of industrial hygiene, health physics, and safety.
43-21A-3.	Definitions.	43-21A-8.	Exceptions.
43-21A-4.	Regulation of certain terms and titles.	43-21A-9.	Unauthorized use of certification mark.
43-21A-5.	Identification, advertisement, or representation of business entries as providers of certain services.	43-21A-10.	Penalties.

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Plant and Job Safety — OSHA and State Laws, § 1 et seq. **C.J.S.** — 51 C.J.S., Labor Relations, § 27 et seq.

43-21A-1. Short title.

This chapter shall be known and may be cited as the “Industrial Hygiene, Health Physics, and Safety Profession Recognition and Title Protection Act.” (Code 1981, § 43-21A-1, enacted by Ga. L. 2005, p. 956, § 1/HB 353.)

43-21A-2. Purpose of chapter.

(a) The purpose of this chapter is to provide legal recognition to the professions of industrial hygiene, health physics, and safety, as well as provide assurance to the public that individuals representing themselves as being involved in the professions of industrial hygiene, health physics, and safety have met minimum qualifications, thereby protecting the public health and safety.

(b) This chapter is also enacted for the purposes of:

(1) Prohibiting an individual from representing that the individual is a certified associate industrial hygienist, certified health physicist, certified industrial hygienist, certified safety professional, construction health and safety technician, occupational health and safety technologist, or registered radiation protection technologist unless the individual meets certain qualifications;

(2) Prohibiting a business entity from identifying, representing, or advertising itself as a provider of industrial hygiene, health physics, or safety services furnished by a certified associate industrial hygienist, certified health physicist, certified industrial hygienist, certified safety professional, construction health and safety technician, occupational health and safety technologist, or registered radiation protection technician unless the business entity meets certain qualifications; and

(3) Providing or recognizing certain qualifications for individuals and business entities using certain titles or making certain representations relating to the provision of industrial hygiene, health physics, or safety services. (Code 1981, § 43-21A-2, enacted by Ga. L. 2005, p. 956, § 1/HB 353.)

43-21A-3. Definitions.

As used in this chapter, the term:

(1) “Accredited college or university” means a United States college or university that holds accreditation from one of the six regional accrediting bodies or the Distance Education and Training Council which are recognized by the Council on Higher Education and the U.S. Department of Education. A degree must be awarded during the time for which the institutional accreditation was issued. A college or university that is located outside of the United States will be considered on the basis of its accreditation status in the education system that has jurisdiction.

(2) “American Academy of Health Physics” means the nonprofit corporation established to improve the practice and educational standards of the profession of health physics through certification of individuals by the American Board of Health Physics which establishes education, experience, examination, and maintenance requirements for certification and prepares, administers, and grades the certification examinations and issues certification to successful candidates.

(3) “American Board of Industrial Hygiene” means the nonprofit corporation established to improve the practice and educational standards of the profession of industrial hygiene by certifying individuals who meet its education, experience, examination, and maintenance requirements.

(4) “Board of Certified Safety Professionals” means the nonprofit corporation established to improve the practice and educational standards of the profession of safety by certifying individuals who meet its education, experience, examination, and maintenance requirements.

(5) "Certified associate industrial hygienist" means a person who has received the designation "certified associate industrial hygienist" by the American Board of Industrial Hygiene and whose certification has not lapsed or been revoked.

(6) "Certified health physicist" means a person who has received the designation "certified health physicist" by the American Board of Health Physics and whose certification has not lapsed or been revoked.

(7) "Certified industrial hygienist" means a person who has received the designation "certified industrial hygienist" by the American Board of Industrial Hygiene and whose certification has not lapsed or been revoked.

(8) "Certified safety professional" means a person who has been certified by the Board of Certified Safety Professionals and whose certification has not lapsed or been revoked.

(9) "Construction health and safety technician" means a person who, by virtue of education, experience, and examination, is recognized by the American Board of Industrial Hygiene and Board of Certified Safety Professionals Council on Certification of Health, Environmental and Safety Technologists.

(10) "Health physicist" means a person having education or experience equivalent to a baccalaureate or graduate degree from an accredited college or university in health physics, radiation safety, radiation protection, biology, chemistry, engineering, physics, or a closely related physical or biological science who, by virtue of special studies and training, has acquired competence in health physics. Such special studies and training must have been sufficient in such cognate sciences to provide the ability and competency to:

(A) Anticipate and recognize the interactions of radiation with matter and to understand the effects of radiation on animals, people, and the environment;

(B) Evaluate, on the basis of training and experience and with the aid of quantitative measurement techniques, the magnitude of radiological factors in terms of their ability to impair human and environmental health and well-being; and

(C) Prescribe methods to prevent, eliminate, control, or reduce radiation exposure to workers, patients, the public, and the environment.

(11) "Health physics" means that science and art devoted to the anticipation, recognition, evaluation, and control of radioactive material releases and potential radiation hazards in or from the work-

place that may cause impaired health and well-being or injury among workers and may also impact the general community and the environment.

(12) "Industrial hygiene" means that science and practice devoted to the anticipation, recognition, evaluation, and control of those environmental factors and stresses arising in or from the workplace that may cause sickness, impaired health and well-being, or significant discomfort among workers and may also impact the general community.

(13) "Industrial hygiene certification organization" means an organization which has been in existence for at least five years and which has been established to improve the practice and educational standards of the profession of industrial hygiene by certifying individuals who meet its education, experience, and examination requirements. The organization shall be accredited by the National Commission of Certifying Agencies, the Council of Engineering and Scientific Specialty Boards, or a nationally recognized accrediting body which uses certification criteria equal to or greater than that of the National Commission of Certifying Agencies or the Council of Engineering and Scientific Specialty Boards. The organization shall maintain criteria at least equivalent to that of the American Board of Industrial Hygiene.

(14) "Industrial hygienist" means a person having a baccalaureate or graduate degree from an accredited college or university in industrial hygiene, biology, chemistry, engineering, physics, or a closely related physical or biological science who, by virtue of special studies and training, has acquired competence in industrial hygiene. Such special studies and training must have been sufficient in such cognate sciences to provide the ability and competency to:

(A) Anticipate and recognize the environmental factors and stresses associated with work and work operations and understand their effects on people and their well-being;

(B) Evaluate, on the basis of training and experience and with the aid of quantitative measurement techniques, the magnitude of these factors and stresses in terms of their ability to impair human health and well-being; and

(C) Prescribe methods to prevent, eliminate, control, or reduce such factors and stresses and their effects.

(15) "National Registry of Radiation Protection Technologists" means the nonprofit corporation established to promote the education and training of radiation protection technologists and, by so doing, to promote and advance the science of health physics and to provide

incentives and services to encourage personnel to maintain and expand radiation protection education and training.

(16) "Occupational health and safety technologist" means a person who, by virtue of special studies and training, has acquired proficiency in one or more areas of occupational health and safety recognized by the American Board of Industrial Hygiene and Board of Certified Safety Professionals Council on Certification of Health, Environmental and Safety Technologists.

(17) "Registered radiation protection technologist" means a person who has received the designation "registered radiation protection technologist" from the National Registry of Radiation Protection Technologists, whose registration has not lapsed or been revoked, and who is engaged in providing protection to the radiation worker, the general public, and the environment from the effects of ionizing radiation.

(18) "Safety profession" means the science and art concerned with the preservation of human and material resources through the systematic application of principles drawn from such disciplines as engineering, education, psychology, physiology, enforcement, and management for anticipating, identifying, and evaluating hazardous conditions and practices; developing hazard control designs, methods, procedures, and programs; implementing, administering, and advising others on hazard controls and hazard control programs; and measuring, auditing, and evaluating the effectiveness of hazard controls and hazard control programs.

(19) "Safety profession certification organization" means an organization which has been in existence for at least five years and which has been established to improve the practice and educational standards of the safety profession by certifying individuals who meet its education, experience, and examination requirements. The organization shall be accredited by the National Commission of Certifying Agencies, the Council of Engineering and Scientific Specialty Boards, or a nationally recognized accrediting body which uses certification criteria equal to or greater than that of the National Commission of Certifying Agencies or the Council of Engineering and Scientific Specialty Boards. The organization shall maintain criteria at least equivalent to that of the Board of Certified Safety Professionals. (Code 1981, § 43-21A-3, enacted by Ga. L. 2005, p. 956, § 1/HB 353.)

43-21A-4. Regulation of certain terms and titles.

(a) An individual shall meet the requirements and qualifications as set out in this chapter before such individual uses the title or represents himself or herself to the public as a certified associate industrial

hygienist, certified health physicist, certified industrial hygienist, certified safety professional, construction health and safety technician, health physicist, industrial hygienist, occupational health and safety technologist, or registered radiation protection technologist.

(b) An individual shall not use the title "certified associate industrial hygienist," the initials "CAIH" or "C.A.I.H.," or any variation of those terms to identify, advertise, or represent, by any means of communication, that the individual provides industrial hygiene services as a certified associate industrial hygienist unless:

(1) The individual is designated as a certified associate industrial hygienist by the American Board of Industrial Hygiene; and

(2) The certified associate industrial hygienist designation has not lapsed or been revoked.

(c) An individual shall not use the title "certified health physicist," the initials "CHP" or "C.H.P.," or any variation of those terms to identify, advertise, or represent, by any means of communication, that the individual provides health physics services as a certified health physicist unless:

(1) The individual is designated as a certified health physicist by the American Board of Health Physics; and

(2) The certified health physics designation has not lapsed or been revoked.

(d) An individual shall not use the title "certified industrial hygienist," the initials "CIH" or "C.I.H.," or any variation of those terms to identify, advertise, or represent, by any means of communication, that the individual provides industrial hygiene services as a certified industrial hygienist unless:

(1) The individual is designated as a certified industrial hygienist by the American Board of Industrial Hygiene; and

(2) The certified industrial hygienist designation has not lapsed or been revoked.

(e) An individual shall not use the title "certified safety professional," the initials "CSP" or "C.S.P.," or any variation of those terms to identify, advertise, or represent, by any means of communication, that the individual provides safety services as a certified safety professional unless:

(1) The individual is designated as a certified safety professional by the Board of Certified Safety Professionals; and

(2) The certified safety professional designation has not lapsed or been revoked.

(f) An individual shall not use the title "construction health and safety technician," the initials "CHST" or "C.H.S.T.," or any variation of those terms to identify, advertise, or represent, by any means of communication, that the individual provides industrial hygiene or safety services as a construction health and safety technician unless:

(1) The individual is designated as a construction health and safety technician by the American Board of Industrial Hygiene and the Board of Certified Safety Professionals Council on Certification of Health, Environmental and Safety Technologists; and

(2) The construction health and safety technician designation has not lapsed or been revoked.

(g) An individual shall not use the title "health physicist," the initials "HP" or "H.P.," or any variation of those terms to identify, advertise, or represent, by any means of communication, that the individual provides health physics services as a health physicist unless the individual meets the definition of health physicist as stated in this chapter.

(h) An individual shall not use the title "industrial hygienist," the initials "IH" or "I.H.," or any variation of those terms to identify, advertise, or represent, by any means of communication, that the individual provides industrial hygiene services as an industrial hygienist unless the individual meets the definition of industrial hygienist as stated in this chapter.

(i) An individual shall not use the title "occupational health and safety technologist," the initials "OHST" or "O.H.S.T.," or any variation of those terms to identify, advertise, or represent, by any means of communication, that the individual provides industrial hygiene or safety services as an occupational health and safety technologist unless:

(1) The individual is designated as an occupational health and safety technologist by the American Board of Industrial Hygiene and the Board of Certified Safety Professionals Council on Certification of Health, Environmental and Safety Technologists; and

(2) The occupational health and safety technologist designation has not lapsed or been revoked.

(j) An individual shall not use the title "registered radiation protection technologist," the initials "RRPT" or "R.R.P.T.," or any variation of those terms to identify, advertise, or represent, by any means of communication, that the individual provides radiation protection services as a registered radiation protection technologist unless:

(1) The individual is designated as a registered radiation protection technologist by the National Registry of Radiation Protection Technologists; and

(2) The registered radiation protection technologist designation has not lapsed or been revoked. (Code 1981, § 43-21A-4, enacted by Ga. L. 2005, p. 956, § 1/HB 353.)

43-21A-5. Identification, advertisement, or representation of business entries as providers of certain services.

(a) A business entity shall not identify, advertise, or represent itself as a provider of industrial hygiene services furnished by certified associate industrial hygienists unless the industrial hygiene services are provided by or under the direct supervision of a certified associate industrial hygienist.

(b) A business entity shall not identify, advertise, or represent itself as a provider of health physics services furnished by certified health physicists unless the health physics services are provided by or under the direct supervision of a certified health physicist.

(c) A business entity shall not identify, advertise, or represent itself as a provider of industrial hygiene services furnished by certified industrial hygienists unless the industrial hygiene services are provided by or under the direct supervision of a certified industrial hygienist.

(d) A business entity shall not identify, advertise, or represent itself as a provider of safety services furnished by certified safety professionals unless the safety services are provided by or under the direct supervision of a certified safety professional.

(e) A business entity shall not identify, advertise, or represent itself as a provider of industrial hygiene or safety services furnished by occupational health and safety technologists unless the industrial hygiene or safety services are provided by or under the direct supervision of an occupational health and safety technologist.

(f) A business entity shall not identify, advertise, or represent itself as a provider of radiation protection services furnished by registered radiation protection technologists unless the radiation protection services are provided by or under the direct supervision of a registered radiation protection technologist.

(g) A business entity shall not identify, advertise, or represent itself as a provider of industrial hygiene or safety services furnished by construction health and safety technicians unless the industrial hygiene or safety services are provided by or under the direct supervision of a construction health and safety technician. (Code 1981, § 43-21A-5, enacted by Ga. L. 2005, p. 956, § 1/HB 353.)

43-21A-6. Unfair business practices.

It is an unfair business practice for any person to represent himself or herself as a certified associate industrial hygienist, certified health physicist, certified industrial hygienist, certified safety professional, construction health and safety technician, health physicist, industrial hygienist, occupational health and safety technologist, or registered radiation protection technologist unless he or she complies with the requirements of this chapter. (Code 1981, § 43-21A-6, enacted by Ga. L. 2005, p. 956, § 1/HB 353.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, “he or she complies” was substituted for “they comply” near the end of this Code section.

43-21A-7. State or local government regulation of the practice of industrial hygiene, health physics, and safety.

No entity of state or local government shall by rule or otherwise prohibit or restrict the practice of industrial hygiene, health physics, or safety by any qualified individual who complies with the provisions established by or pursuant to this chapter, except when authorized by state statute to regulate a specific activity that may include the practice of industrial hygiene, health physics, or safety. (Code 1981, § 43-21A-7, enacted by Ga. L. 2005, p. 956, § 1/HB 353.)

43-21A-8. Exceptions.

This chapter does not apply to:

(1) A person employed as an apprentice under the supervision of a certified associate industrial hygienist, certified health physicist, certified industrial hygienist, certified safety professional, construction health and safety technician, occupational health and safety technologist, or registered radiation protection technologist;

(2) A student studying industrial hygiene, health physics, or safety engaging in supervised activities related to industrial hygiene, health physics, or safety;

(3) Any person legally regulated in this state under any other licensing Act or regulation and engaging in the activities permitted under his or her license, provided he or she does not represent himself or herself to the public as a certified associate industrial hygienist, certified health physicist, certified industrial hygienist, certified safety professional, construction health and safety technician, health physicist, industrial hygienist, occupational health and safety technologist, or registered radiation protection technologist; and

(4) Individuals practicing within the scope of the meaning of industrial hygiene, health physics, or safety so long as the individual does not use the title or initials of or represent themselves to the public as a certified associate industrial hygienist, certified health physicist, certified industrial hygienist, certified safety professional, construction health and safety technician, health physicist, industrial hygienist, occupational health and safety technologist, or registered radiation protection technologist. (Code 1981, § 43-21A-8, enacted by Ga. L. 2005, p. 956, § 1/HB 353.)

43-21A-9. Unauthorized use of certification mark.

No person shall mislead or deceive anyone by the unauthorized use of any industrial hygiene, health physics, or safety certification mark that has been awarded by the U.S. Patent and Trademark Office. (Code 1981, § 43-21A-9, enacted by Ga. L. 2005, p. 956, § 1/HB 353.)

43-21A-10. Penalties.

Any person who violates this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding \$1,000.00. (Code 1981, § 43-21A-10, enacted by Ga. L. 2005, p. 956, § 1/HB 353.)

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders not required. — A violation of O.C.G.A. § 43-21A-10 is not one for which those charged with a violation are to be fingerprinted. 2006 Op. Att’y Gen. No. 2006-2.

CHAPTER 22

JUNK DEALERS

Sec.		Sec.	
43-22-1.	Definitions.	43-22-4.	Written consent to enter another's property.
43-22-2.	Registration with judge of probate court.	43-22-5.	Penalty.
43-22-3.	Registration fee.		

Cross references. — Maintenance of records by secondary metals recyclers regarding purchase of copper wire or cable, § 10-1-350 et seq. Restrictions on location of junkyards and screening and fencing

requirements for junkyards, § 32-6-240 et seq. Scrap metal processors, T. 43, C. 43. Used motor vehicle dealers, parts dealers, T. 43, C. 47.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law,

§ 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

Regulation of junk dealers, 30 ALR 1427; 45 ALR2d 1391.

43-22-1. Definitions.

As used in this chapter, the term:

(1) "Junk" means any used article of commerce which is composed principally of iron, steel, brass, copper, zinc, or their alloys, or any other base metals and which is commonly bought for the purpose of resale or refabrication, or both.

(2) "Junk dealer" means any person, firm, or corporation or officer, agent, or employee of any person, firm, or corporation who engages in the purchase of junk for the purpose of resale or refabrication, or both. (Ga. L. 1939, p. 337, §§ 4, 5.)

OPINIONS OF THE ATTORNEY GENERAL

Person selling used automobile parts is a junk dealer and subject to junk dealer's tax. 1950-51 Op. Att'y Gen. p. 187.

43-22-2. Registration with judge of probate court.

No person, firm, or corporation or employee of any person, firm, or corporation shall engage in the business of purchasing junk in any county of this state without first registering his name with the judge of the probate court of the county in which he intends to engage in such business, the name to be entered upon a book in the judge's office, to be known as the junk dealers' book, and paying to the judge the registration fee as provided in Code Section 43-22-3. (Ga. L. 1939, p. 337, § 2.)

RESEARCH REFERENCES

ALR. — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

43-22-3. Registration fee.

The registration fee provided for in Code Section 43-22-2 shall be \$1.00, which shall be paid to the judge of the probate court at the time of registration by each person, firm, or corporation and by the individual agent and employee of any person, firm, or corporation engaged in the business of purchasing junk in such county. After the initial payment, a registration fee of \$1.00 shall be paid annually by each junk dealer. All fees paid to the judge of the probate court under this chapter shall be and remain the property of the judge of the probate court, and the judge of the probate court shall issue to the person making such payment a proper receipt therefor. (Ga. L. 1939, p. 337, § 3.)

43-22-4. Written consent to enter another's property.

It shall be unlawful for any person, firm, or corporation or officer thereof or agent or employee of such person, firm, or corporation who is engaged in business as a junk dealer to enter upon the lands of another person, without the written consent of the owner or tenant in possession of such land, for the purpose of buying junk, or soliciting for the purpose of buying junk, or, after entering upon such land, to purchase or offer to purchase junk in any manner whatsoever. (Ga. L. 1939, p. 337, § 1.)

Cross references. — Right of action for interference with enjoyment of property, § 51-9-1.

43-22-5. Penalty.

Any person, firm, or corporation or officer, agent, or employee thereof who violates any provision of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$50.00 nor more than \$100.00, or imprisonment not to exceed six months, or both. (Ga. L. 1939, p. 337, § 6.)

CHAPTER 23

LANDSCAPE ARCHITECTS

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|------------|---|-----------|---|
| Sec. | | Sec. | |
| 43-23-1. | Definitions. | 43-23-9. | Reciprocity. |
| 43-23-2. | Creation of board; members. | 43-23-10. | Temporary licenses. |
| 43-23-3. | (Effective until January 1, 2013. See note.) Seal; copies of records and papers as evidence. | 43-23-11. | Form of licenses and certificates; seal on certificates; delivery of license to licensee; display of certificate. |
| 43-23-3. | (Effective January 1, 2013. See note.) Seal. | 43-23-12. | Investigations; censure of licensees; revocation or suspension of licenses. |
| 43-23-4. | Power of board to regulate issuance of licenses, to revoke or suspend licenses, and to censure licensees. | 43-23-13. | Applicability of the "Georgia Administrative Procedure Act." |
| 43-23-5. | License requirement for persons engaged in landscape architecture; enjoining unauthorized use of title or term "landscape architect." | 43-23-14. | Practice of landscape architecture by partnerships, limited liability companies, and corporations; restricted use of term; advertising. |
| 43-23-6. | Application for licenses. | 43-23-15. | Injunctions. |
| 43-23-7. | Qualifications of applicants; examinations. | 43-23-16. | Applicability of chapter to qualified registered architects and professional engineers. |
| 43-23-7.1. | Continuing education requirement. | 43-23-17. | Exceptions to operation of chapter; restricted use of term. |
| 43-23-8. | Examination fee; issuance of licenses; biennial renewal of licenses; renewal fee; effect of nonpayment of check submitted as license fee. | 43-23-18. | Practicing landscape architecture or representing oneself as or acting as a landscape architect without a license. |
| | | 43-23-19. | Penalty. |
| | | 43-23-20. | Termination [Repealed]. |

Cross references. — Architects generally, T. 43, C. 4.

Administrative rules and regulations. — Organization, Official Compila-

tion of the Rules and Regulations of the State of Georgia, Georgia State Board of Landscape Architects, Chapter 310-1.

OPINIONS OF THE ATTORNEY GENERAL

Persons offering services solely as city, regional, or urban planners exempt from licensure requirements. — Person providing services within the definition of the practice of landscape architecture is not required to comply with the

licensure requirements of landscape architects if that person offers services solely as a city, regional, or urban planner and does not use the title "landscape architect." 1980 Op. Att'y Gen. No. 80-4.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur.

2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266,

284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law,

§ 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

43-23-1. Definitions.

As used in this chapter the term:

- (1) "Board" means the Georgia Board of Landscape Architects.
- (2) "Landscape architect" means a person who is licensed pursuant to this chapter to practice or teach landscape architecture.
- (3) "Landscape architecture" means the performance of professional services, including, but not limited to, consultation, investigation, planning, design, preparation of drawings and specifications, and responsible supervision, all in connection with the preservation or determination of proper land uses, natural land features, esthetics, planting plans, the shaping of land to produce the best functional and esthetic effect, and grading plans with determination of drainage. This term shall also include the consideration of environmental problems involving land areas, as such problems relate to the public health, safety, and welfare. (Ga. L. 1958, p. 400, § 1; Code 1933, § 84-4001, enacted by Ga. L. 1976, p. 1730, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Landscape architects may prepare drainage plans for design and arrangement of land forms and nonhabitable features. 1974 Op. Att'y Gen. No. 74-2.

County may not restrict drainage plans to engineers. — County ordinance requiring that registered professional engineers prepare drainage plans submitted to the county is erroneous in light of the statutes which provide that landscape architects may prepare drainage plans for the design and arrangement of land forms and nonhabitable features. 1974 Op. Att'y Gen. No. 74-2.

Definition of "landscape architect-

ture" in O.C.G.A. § 43-23-1(3) does not appear to be significantly different from the definition of "landscape architect" in the 1958 Act; the definitions in the 1976 Act and the 1958 Act appear to be functionally indistinguishable with respect to the types of plans that can be prepared by a landscape architect. Both Acts permit licensed landscape architects to design and arrange land forms for the preservation and determination of proper land uses including the preparation of grading plans for the determination of drainage. 1990 Op. Att'y Gen. No. 90-7.

RESEARCH REFERENCES

C.J.S. — 6 C.J.S., Architects, § 2 et seq.

43-23-2. Creation of board; members.

(a) The Georgia Board of Landscape Architects is created and shall be under the jurisdiction of the Secretary of State and the division director. The board shall be composed of five members, each of whom shall be appointed by the Governor. Four of the five members shall be licensed landscape architects who shall be residents of this state and actively engaged in the practice of landscape architecture. The fifth member of the board shall be a resident of this state and shall have no connection whatsoever with the practice of landscape architecture. The four members of the board in office on July 1, 1993, shall serve the remainder of their terms of office, as provided by the law under which each was appointed. The additional member to be added to the board in 1993 shall be appointed for an initial term of four years. Upon the expiration of each member's term of office, a successor shall be appointed for a term of four years, and all succeeding appointments made under this subsection shall be for four-year terms.

(b) Members of the board shall serve until their successors are appointed and qualified. Vacancies on the board shall be filled by appointment of the Governor and, in the same manner as provided in subsection (a) of this Code section, for the unexpired term of the member creating such vacancy.

(c) The board shall select from its members a chairman.

(d) The board may do all things necessary and convenient for its own government and for carrying into effect the provisions of this chapter and may promulgate necessary rules and regulations to carry out the provisions of this chapter, not otherwise inconsistent with this chapter, including regulations governing the professional conduct of persons licensed by the board. The board shall be authorized to meet as often as necessary in order to conduct its business, but in no event shall the board meet less than twice during every calendar year.

(e) Each member of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2. (Ga. L. 1958, p. 400, § 2; Code 1933, § 84-4005, enacted by Ga. L. 1976, p. 1730, § 1; Ga. L. 1979, p. 378, §§ 1, 2; Ga. L. 1980, p. 591, § 1; Ga. L. 1993, p. 1023, § 1; Ga. L. 1994, p. 97, § 43; Ga. L. 2000, p. 1706, § 19.)

Administrative rules and regulations. — Rules of the profession, Official Compilation of the Rules and Regulations

of the State of Georgia, Rules of Georgia State Board of Landscape Architects, Chapter 310-1 et seq.

43-23-3. (Effective until January 1, 2013. See note.) Seal; copies of records and papers as evidence.

(a) The board shall adopt a seal, which may be either an engraved or an ink stamped seal, with the words "Board of Landscape Architects, State of Georgia" or such other device as the board may desire included thereon, by which it shall authenticate the acts of the board.

(b) Copies of all records and papers in the office of the board, certified by the signature of the chairman of the board, shall be received in evidence in all cases equally and with like effect as the originals. (Code 1933, § 84-4006, enacted by Ga. L. 1976, p. 1730, § 1.)

Editor's notes. — Code Section 2013, and the second version becomes effective on that date.
43-23-3 is set out twice in this Code. The first version is effective until January 1,

43-23-3. (Effective January 1, 2013. See note.) Seal.

The board shall adopt a seal, which may be either an engraved or an ink stamped seal, with the words "Board of Landscape Architects, State of Georgia" or such other device as the board may desire included thereon, by which it shall authenticate the acts of the board. (Code 1933, § 84-4006, enacted by Ga. L. 1976, p. 1730, § 1; Ga. L. 2011, p. 99, § 69/HB 24.)

The 2011 amendment, effective January 1, 2013, deleted the former subsection (a) designation and deleted former subsection (b) which read: "Copies of all records and papers in the office of the board, certified by the signature of the chairman of the board, shall be received in evidence in all cases equally and with like effect as the originals." See editor's note for applicability.

Editor's notes. — Code Section 43-23-3 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

Ga. L. 2011, p. 99, § 101, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

43-23-4. Power of board to regulate issuance of licenses, to revoke or suspend licenses, and to censure licensees.

The board shall have the full power to regulate the issuance of licenses, to revoke or suspend licenses issued under this chapter, and to censure licensees. (Code 1933, § 84-4008, enacted by Ga. L. 1976, p. 1730, § 1.)

43-23-5. License requirement for persons engaged in landscape architecture; enjoining unauthorized use of title or term "landscape architect."

(a) No person shall perform or offer, attempt, or agree to perform any act which would constitute the practice of landscape architecture, as defined in paragraph (3) of Code Section 43-23-1, whether as a part of a transaction or as an entire transaction, unless such person has received a license as a landscape architect pursuant to this chapter.

(b) The commission of a single act by a person required to be licensed under this chapter and who is not licensed shall constitute a violation of this chapter.

(c) Notwithstanding any provisions for criminal liability, any person who, without possessing a valid unsuspended, unrevoked license as provided in this chapter, uses the title or term "landscape architect" in any sign, card, listing, advertisement, or in any other manner that would imply or indicate that he is a landscape architect as defined in this chapter may be enjoined from using such title or term in such manner. (Ga. L. 1958, p. 400, § 6; Code 1933, § 84-4002, enacted by Ga. L. 1976, p. 1730, § 1.)

Cross references. — False or fraudulent advertising, § 10-1-420 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Persons employed by state agencies as landscape architects must be licensed. 1977 Op. Att'y Gen. No. 77-6.

RESEARCH REFERENCES

ALR. — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

43-23-6. Application for licenses.

Any person desiring to act as a landscape architect must file an application for a license with the board. The application shall be in such form and detail as the board shall prescribe. (Ga. L. 1958, p. 400, § 10; Code 1933, § 84-4009, enacted by Ga. L. 1976, p. 1730, § 1; Ga. L. 1986, p. 430, § 1.)

43-23-7. Qualifications of applicants; examinations.

(a) Each applicant for initial licensure as a landscape architect shall:

(1) Be at least 18 years of age;

(2) Hold a Bachelor of Landscape Architecture degree or a Bachelor of Science degree in landscape architecture from a college or school of landscape architecture, environmental design, or its equivalent approved by the board; and

(3)(A) Have at least 18 months of training in the actual practice of landscape architecture as may be approved by the board, provided that at least one year of such actual practice shall be subsequent to receiving such undergraduate degree; or

(B) Have earned a postgraduate degree in landscape architecture from a college or school of landscape architecture or environmental design approved by the board.

(b) Persons who, on July 1, 1993, held licenses as landscape architects issued under the laws of this state shall not be required to obtain additional licenses under this chapter but shall otherwise be subject to all applicable provisions of this chapter, including those pertaining to renewal of such license; and such licensee shall be considered licensed for all purposes under this chapter and subject to the provisions hereof.

(c) The applicant for initial licensure must have passed a written examination generally covering the matters confronting landscape architects, provided that persons holding a Bachelor of Landscape Architecture degree or a Bachelor of Science of Landscape Architecture degree in landscape architecture from approved colleges or schools of landscape architecture, environmental design, or their equivalent shall be permitted to take such examination upon furnishing proof of completion of the 18 months' experience requirement or the educational equivalent and proof of their graduation to the board. The examination shall cover such matters as are reasonably calculated to test the knowledge and skill of the applicant in the field of landscape architecture. Failure to pass the examination shall be grounds for denial of a license without a further hearing. (Ga. L. 1958, p. 400, §§ 10, 11; Code 1933, § 84-4010, enacted by Ga. L. 1976, p. 1730, § 1; Ga. L. 1982, p. 2378, §§ 3, 5; Ga. L. 1992, p. 6, § 43; Ga. L. 1993, p. 1023, § 2.)

43-23-7.1. Continuing education requirement.

(a) The board shall be authorized to require persons holding a license under this chapter to complete board approved continuing education of six hours per year. The board shall be authorized to approve courses

offered by institutions of higher learning, specialty societies, or professional organizations.

(b) The board shall be authorized to waive the continuing education requirement in cases of hardship, disability, or illness or under such other circumstances as the board deems appropriate.

(c) The board shall be authorized to promulgate rules and regulations to implement and ensure compliance with the requirements of this Code section. (Code 1981, § 43-23-7.1, enacted by Ga. L. 1993, p. 1023, § 3.)

43-23-8. Examination fee; issuance of licenses; biennial renewal of licenses; renewal fee; effect of nonpayment of check submitted as license fee.

(a) Every applicant for licensure as a landscape architect shall submit with his or her application for such licensure a fee in an amount established by the board. If the applicant successfully passes the examination and is otherwise qualified for licensure as a landscape architect, the board shall thereafter, upon payment of a license fee to be determined by the board, issue a license to the applicant, which shall be valid for up to two years and shall be renewable biennially. All licenses shall expire on the renewal date established by the division director. The biennial license renewal fees shall be an amount established by the board.

(b) Any check presented to the board as a fee for either an original or renewal license which is returned unpaid shall be cause for revocation or denial of the license. (Ga. L. 1958, p. 400, §§ 16, 17; Ga. L. 1971, p. 559, § 1; Code 1933, § 84-4011, enacted by Ga. L. 1976, p. 1730, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2010, p. 266, § 30/SB 195.)

The 2010 amendment, effective May 20, 2010, in subsection (a), in the first sentence, inserted “or her” near the middle and deleted “, which shall be sufficient to cover the costs of examination” follow-

ing “board” at the end, and inserted “license” prior to “fee” in the middle of the second sentence.

Cross references. — Bank deposits and collections, T. 11, A. 4.

43-23-9. Reciprocity.

The board may certify an applicant for registration without examination if such applicant is legally registered as a landscape architect in any state, country, or political entity whose requirements for registration are substantially equivalent to the requirements provided in this chapter and which state, country, or political entity extends the same privilege of reciprocity to landscape architects registered in this state. Such application shall be accompanied by the same licensing fee as required of other landscape architects, provided that such fee shall be

returned if the license is not granted. (Code 1933, § 84-4013, enacted by Ga. L. 1976, p. 1730, § 1.)

Cross references. — Cooperation between Georgia and other states generally, T. 28, C. 6.

Administrative rules and regula-

tions. — Reciprocity, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Landscape Architects, Chapter 310-6.

43-23-10. Temporary licenses.

Any landscape architect who is duly registered in any other state or country may be issued a temporary license as a landscape architect for a stipulated site and project within this state, provided that such person:

- (1) Requests a temporary license on a form provided by the board;
- (2) Presents evidence satisfactory to the board that he is competent to practice landscape architecture as the term is defined in this state;
- (3) Has attained the age of 18 years; and
- (4) Pays a fee to be determined by the board for such temporary license. (Ga. L. 1958, p. 400, § 8; Code 1933, § 84-4014, enacted by Ga. L. 1976, p. 1730, § 1.)

Administrative rules and regulations. — Temporary license, Official Compilation of the Rules and Regulations of

the State of Georgia, Georgia State Board of Landscape Architects, Chapter 310-5.

43-23-11. Form of licenses and certificates; seal on certificates; delivery of license to licensee; display of certificate.

(a) The board shall prescribe the form of licenses issued under this chapter. The license of each landscape architect shall be delivered or mailed to the landscape architect.

(b) The board shall provide certificates to each licensed landscape architect. The board shall prescribe the form of certificates issued. The certificate shall have placed thereon the seal of the board. The certificate of each landscape architect shall be delivered or mailed to the landscape architect. It shall be the duty of the landscape architect to display his certificate conspicuously in his place of business. (Code 1933, § 84-4015, enacted by Ga. L. 1976, p. 1730, § 1; Ga. L. 1986, p. 430, § 2.)

43-23-12. Investigations; censure of licensees; revocation or suspension of licenses.

The board may, upon its own motion, and shall, upon the complaint in writing of any person, initiate investigations into the actions of any licensed landscape architect and shall have the power to censure the licensee or to revoke or suspend any license issued under this chapter whenever the board concludes that the licensee has violated any provision of this chapter or whenever the board has determined that the licensee:

- (1) Has obtained a license by false or fraudulent representations;
- (2) Has impersonated another landscape architect or former landscape architect with the same or similar name, or is practicing under an assumed or misleading name, to include practicing under a partnership, limited liability company, or corporate name in which any person who is not a landscape architect is named;
- (3) Has aided or abetted an unlicensed person in the practice of landscape architecture;
- (4) Has been convicted of a felony or other crime involving moral turpitude;
- (5) Has, in the practice of landscape architecture, been guilty of fraud, deceit, negligence, or incompetence;
- (6) Has affixed his or her signature to plans, drawings, specifications, or other instruments of service which have not been prepared by him or her or under his or her immediate and responsible direction or has permitted his or her name to be used for the purpose of assisting any person who is not a landscape architect to evade the provisions of this chapter; or
- (7) Has violated the provisions of subsection (a) of Code Section 43-1-19. (Ga. L. 1958, p. 400, § 13; Code 1933, § 84-4017, enacted by Ga. L. 1976, p. 1730, § 1; Ga. L. 1986, p. 430, § 3; Ga. L. 1993, p. 123, § 41.)

RESEARCH REFERENCES

ALR. — Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 ALR 1388.

43-23-13. Applicability of the “Georgia Administrative Procedure Act.”

Any action taken by the board with respect to any license issued under this chapter shall be in accordance with Chapter 13 of Title 50,

the "Georgia Administrative Procedure Act." (Ga. L. 1958, p. 400, § 13A; Code 1933, § 84-4018, enacted by Ga. L. 1976, p. 1730, § 1.)

43-23-14. Practice of landscape architecture by partnerships, limited liability companies, and corporations; restricted use of term; advertising.

Any partnership, firm, limited liability company, or corporation may engage in the practice of landscape architecture, as defined in this chapter, provided that any service which constitutes the practice of landscape architecture shall be supervised by a duly licensed landscape architect who shall be responsible for the services furnished by the partnership, firm, limited liability company, or corporation which would otherwise fall within the purview of this chapter. In no event shall the other members of the partnership, limited liability company, firm, or corporation be designated or described as landscape architects if they are not so licensed; and the term landscape architect or any abbreviation thereof or any other designation which conveys the meaning of landscape architect shall not appear in any partnership, firm, limited liability company, or corporate name in which any person is identified who is in fact not a licensed landscape architect. Upon approval of the board, any partnership, limited liability company, firm, or corporation may operate branch offices in this state to provide landscape architectural services, provided that each branch office has a resident landscape architect licensed under this chapter. All classified directory listings, advertisements, signs, and broadcast commercials, except letterheads and business cards, of corporations, firms, limited liability companies, or partnerships offering landscape architectural services shall include the name and license number of a duly licensed landscape architect providing such services. (Code 1933, § 84-4012, enacted by Ga. L. 1976, p. 1730, § 1; Ga. L. 1993, p. 123, § 42; Ga. L. 1993, p. 1023, § 4.)

RESEARCH REFERENCES

ALR. — Right of corporation to engage in business, trade, or activity requiring license from public, 165 ALR 1098.

43-23-15. Injunctions.

Whenever, in the judgment of the board, any person has engaged in any acts or practices which constitute or will constitute a violation of this chapter, the Attorney General may bring an action in the name of the state to abate and temporarily and permanently enjoin such acts and practices and to enforce compliance with this chapter. The board shall not be required to give bond in any such action. (Ga. L. 1958, p. 400, § 6; Code 1933, § 84-4007, enacted by Ga. L. 1976, p. 1730, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Injunctions, § 145.

43-23-16. Applicability of chapter to qualified registered architects and professional engineers.

Nothing in this chapter shall be construed as excluding a qualified registered architect or professional engineer from such landscape architectural practice as may be incidental to the practice of his profession or as excluding a landscape architect registered under this chapter from such architectural or engineering practice as may be incidental to the practice of landscape architecture. (Ga. L. 1958, p. 400, § 9; Code 1933, § 84-4003, enacted by Ga. L. 1976, p. 1730, § 1.)

43-23-17. Exceptions to operation of chapter; restricted use of term.

(a) Except as otherwise provided in this chapter, this chapter shall not apply to:

(1) A contractor engaging in the business of or acting in the capacity of a contractor or landscape contractor in this state, provided that he or she is the prime contractor for the installation of his or her design. A contractor or landscape contractor may not perform design services without also performing the installation of said design;

(2) Any person whose services are offered solely as a gardener or nurseryman;

(3) Any person qualified by training or experience or by both training and experience whose services are offered solely as a municipal, regional, or urban planner; or

(4) Any person employed by a state agency, county, or municipality who engages in the business of or acts in the capacity of a landscape architect, insofar as such acts are performed in the course of employment with the respective governmental entity on lands owned by the jurisdiction by which employed.

(b) None of the persons mentioned in subsection (a) of this Code section shall use the title "landscape architect" without complying with this chapter. (Ga. L. 1958, p. 400, § 9; Code 1933, § 84-4004, enacted by Ga. L. 1976, p. 1730, § 1; Ga. L. 1978, p. 1526, § 1; Ga. L. 1981, p. 781, § 1; Ga. L. 1982, p. 2378, §§ 1, 6; Ga. L. 1993, p. 1023, § 5.)

Administrative rules and regulations. — Exceptions, Official Compilation of the Rules and Regulations of the State

of Georgia, Georgia State Board of Landscape Architects, Chapter 310-10.

OPINIONS OF THE ATTORNEY GENERAL

Landscape contractors exempt from licensure requirements. — Person engaging in the business of landscape contracting in its various forms or acting in the capacity of a landscape contractor is not required to be licensed by the Georgia Board of Landscape Architects even though the person provides services within the definition of the practice of landscape architecture so long as that person does not use the title "landscape architect." 1982 Op. Att'y Gen. No. U82-3.

Gardeners and nurserymen exempt from licensure requirements. — Person whose services are offered solely as a gardener or nurseryman is not required to be licensed by the Georgia Board of Landscape Architects even though the person provides services within the definition of the practice of landscape architecture so long as that person does not use the title "landscape architect." 1982 Op. Att'y Gen. No. U82-7.

43-23-18. Practicing landscape architecture or representing oneself as or acting as a landscape architect without a license.

Any person who shall practice the profession of landscape architecture or represent himself as a landscape architect or act as such, as defined in this chapter, without first obtaining a license to do so as provided in this chapter, or when such license is revoked, shall be guilty of a misdemeanor. (Ga. L. 1958, p. 400, § 14A; Code 1933, § 84-4016, enacted by Ga. L. 1976, p. 1730, § 1.)

43-23-19. Penalty.

Any person who violates any provision of this chapter shall be guilty of a misdemeanor. (Ga. L. 1958, p. 400, § 14A; Code 1933, § 84-4019, enacted by Ga. L. 1976, p. 1730, § 1.)

RESEARCH REFERENCES

ALR. — Injunction as available remedy against prosecution or arrest for conducting business or practicing profession without a license, 167 ALR 915.

43-23-20. Termination.

Repealed by Ga. L. 1992, p. 3137, § 18, effective July 1, 1992.

Editor's notes. — This Code section was based on Ga. L. 1982, p. 2378, §§ 3, 7; Ga. L. 1986, p. 430, § 4; and Ga. L. 1992, p. 3137, § 1.

CHAPTER 24

LIBRARIANS

Sec.		Sec.	
43-24-1.	Definitions.	43-24-5.	Certification of librarians by board.
43-24-2.	Creation of board; members.	43-24-6.	Application for certificate; fees; biennial renewal; duplicate certificate.
43-24-3.	Division director as secretary of board.	43-24-7.	Continuing education requirements.
43-24-4.	Employment of certified librarians by state operated libraries; withholding public funds from noncomplying libraries.		

Cross references. — Public libraries generally, T. 20, C. 5.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614,

615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

43-24-1. Definitions.

As used in this chapter, the term:

(1) “Board” means the State Board for the Certification of Librarians.

(2) “Librarian” means a person with specialized training as identified in this chapter and in the administrative rules and regulations applicable to this chapter and possessing the necessary training and qualifications to plan, organize, communicate, and administer successfully the use of the library’s materials and services.

(3) “Library” means an organization providing services and informational materials in a variety of formatting, including, but not

limited to, books, films, tapes, microforms, and periodicals and having no fewer than 3,000 items which have been selected, acquired, and organized for dissemination. (Ga. L. 1982, p. 1493, §§ 2, 5.)

43-24-2. Creation of board; members.

(a) The State Board for the Certification of Librarians is created, to consist of six persons as follows:

(1) Three librarians certified under this chapter, including one public librarian, one special librarian, and one other currently practicing librarian, and one person who shall be a trustee of a public library;

(2) A member to be appointed from the public at large who shall have no connection whatsoever with the library profession; and

(3) The director of public library services of the Board of Regents of the University System of Georgia.

(b) The members referred to in paragraphs (1) and (2) of subsection (a) of this Code section shall be appointed by the Governor and shall be confirmed by the Senate.

(c) The terms of the five members appointed pursuant to paragraphs (1) and (2) of subsection (a) of this Code section shall be five years. The term of the director of public library services of the Board of Regents of the University System of Georgia shall be coextensive with the term of office of this position.

(d) Members of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.

(e) If there is a vacancy on the board, the Governor shall appoint a member to serve the unexpired term. (Ga. L. 1937, p. 245, §§ 1, 2; Ga. L. 1978, p. 918, § 1; Ga. L. 1980, p. 1075, § 1; Ga. L. 1982, p. 1493, §§ 1, 6; Ga. L. 1987, p. 355, § 1; Ga. L. 1988, p. 13, § 43; Ga. L. 1996, p. 167, § 14; Ga. L. 2000, p. 618, § 95.)

Editor's notes. — Ga. L. 1996, p. 167, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Education Reform Act of 1996.'"

Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

Law reviews. — For comment on

Rogers v. Medical Ass'n, 244 Ga. 151, 259 S.E.2d 85 (1979), invalidating Georgia statute requiring Governor's appointments to Composite State Board of Medical Examiners be made solely from nominees submitted by state medical society as an unconstitutional delegation of legislative authority to a private organization, see 29 Emory L.J. 1183 (1980).

43-24-3. Division director as secretary of board.

The same jurisdiction, duties, powers, and authority which the division director has with reference to other professional licensing boards is conferred upon that director with respect to the board. (Ga. L. 1937, p. 245, § 5; Ga. L. 2000, p. 1706, § 12.)

43-24-4. Employment of certified librarians by state operated libraries; withholding public funds from noncomplying libraries.

Any public library serving a political subdivision or subdivisions having a population of over 5,000 according to the United States decennial census of 1970 or any future such census and every library operated by the state or its authority, including libraries of institutions of higher learning, shall not employ in the position of librarian a person who does not hold a librarian's certificate issued by the board. No public funds shall be paid to any library failing to comply with this chapter, provided that nothing in this chapter shall apply to law libraries of counties and municipalities, to libraries of public elementary and high schools, or to libraries of the University System of Georgia. (Ga. L. 1937, p. 245, § 4; Ga. L. 1982, p. 1493, §§ 3, 7.)

OPINIONS OF THE ATTORNEY GENERAL

Librarians employed by the University System of Georgia's libraries are required to be certified by the State Board for the Certification of Librarians under O.C.G.A. § 43-24-4. 1981 Op. Att'y Gen. No. U81-60 (decided prior to 1982 amendment).

Graduation from American Library

Association accredited schools. — It is within a legislative or regulatory body's discretion to conclude that graduation from an American Library Association accredited school is a proper requirement for state certification. 1995 Op. Att'y Gen. No. U95-24.

RESEARCH REFERENCES

ALR. — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

Recovery back of money paid to unli-

censed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

43-24-5. Certification of librarians by board.

The board shall have authority to establish grades of certificates for librarians, to prescribe and hold examinations, to require submission of credentials to establish the qualifications of those seeking certificates as librarians, and to issue certificates of librarianship to qualified persons in accordance with such rules and regulations as it may prescribe. (Ga. L. 1937, p. 245, § 3.)

Administrative rules and regulations. — Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of State Board for the Certification of Librarians, Chapter 320-1 et seq.

43-24-6. Application for certificate; fees; biennial renewal; duplicate certificate.

(a) All applicants for a librarian's certificate shall file an application with the division director, accompanied by a fee which shall be set by the board.

(b) Each certificate issued shall be renewable biennially.

(c) Any certified librarian requesting a duplicate certificate shall be charged a fee as shall be set by the board. (Ga. L. 1937, p. 245, § 5; Ga. L. 1978, p. 918, § 2; Ga. L. 1980, p. 1075, § 1; Ga. L. 2000, p. 1706, § 19.)

43-24-7. Continuing education requirements.

(a) The board shall be authorized to require persons holding a certificate under this chapter to complete board approved continuing education of not less than ten hours biennially as a condition of certificate renewal. The board shall be authorized to approve programs offered by professional associations, educational institutions, government agencies, and bibliographic utilities, and others as it deems appropriate.

(b) The board shall be authorized to waive the continuing education requirement in cases of hardship, disability, or illness or under such other circumstances as the board deems appropriate.

(c) The board shall be authorized to promulgate rules and regulations to implement and ensure compliance with the requirements of this Code section.

(d) The board shall have the authority to appoint a committee or committees composed of certified librarians, as it deems appropriate, to administer, implement, and otherwise carry out the provisions of this chapter relating to continuing education. (Code 1981, § 43-24-7, enacted by Ga. L. 2001, p. 864, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, "not less than" was substituted for "not less than" in the first sentence of subsection (a).

Editor's notes. — This Code section formerly pertained to provisions termi-

nating the State Board for the Certification of Librarians and laws relating to such board. The former Code section was based on Ga. L. 1982, p. 1493, §§ 1, 8 and Ga. L. 1987, p. 355, § 2.

CHAPTER 24A

MASSAGE THERAPY PRACTICE

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|------------|--|------------|---|
| Sec. | | Sec. | |
| 43-24A-1. | Short title. | 43-24A-14. | Display of the license certificate; expiration and renewal of licenses; change of address; inactive status. |
| 43-24A-2. | Legislative findings and intent. | 43-24A-15. | Unlawful acts. |
| 43-24A-3. | Definitions. | 43-24A-16. | Practice of massage therapy without a license; injunctions. |
| 43-24A-4. | The Georgia Board of Massage Therapy; creation; members; terms; reimbursement. | 43-24A-17. | Disciplinary action. |
| 43-24A-5. | Qualifications of board members; removal. | 43-24A-18. | Administrative procedures. |
| 43-24A-6. | Meetings of the board; officers and committees. | 43-24A-19. | Exceptions. |
| 43-24A-7. | Powers of the board. | 43-24A-20. | Continuing education requirements. |
| 43-24A-8. | Licensure of massage therapists; application and requirements. | 43-24A-21. | Proceedings for a restraining order, injunction, or writ of mandamus. |
| 43-24A-9. | Provisional permits. | 43-24A-22. | Local regulation. |
| 43-24A-10. | Applications under oath. | 43-24A-23. | Taxation as a health care activity. |
| 43-24A-11. | Licensing examinations. | 43-24A-24. | Fines and punishments for violations. |
| 43-24A-12. | License by reciprocity [Repealed]. | | |
| 43-24A-13. | License by endorsement. | | |

Editor's notes. — Ga. L. 2005, p. 1251, § 2, not codified by the General Assembly, provided that this chapter shall become effective only when funds are specifically appropriated for purposes of this Act in an Appropriations Act making specific reference to this Act. Funds were appropriated

at the 2006 session of the General Assembly.

Administrative rules and regulations. — Georgia Board of Massage Therapy, Official Compilation of the Rules and Regulations of the State of Georgia, Chapter 345-1 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 58 Am. Jur. 2d, Occupation, Trades, and Professions, § 39 et seq.

C.J.S. — 16C C.J.S., Constitutional Law, § 1361.

43-24A-1. Short title.

This chapter shall be known and may be cited as the “Georgia Massage Therapy Practice Act.” (Code 1981, § 43-24A-1, enacted by Ga. L. 2005, p. 1251, § 1/SB 110.)

43-24A-2. Legislative findings and intent.

The General Assembly acknowledges that the practice of massage therapy affects the public health, safety, and welfare. Massage therapists must have a knowledge of anatomy and physiology and an understanding of the relationship between the structure and function of the tissue being treated and the total function of the body. Massage is therapeutic and regulations are necessary to protect the public from unqualified practitioners. It is in the interest of the public to set standards of qualifications, education, training, and experience for those who seek to practice massage therapy; to promote high standards of professional performance for those licensed to practice massage therapy; and to protect the public from unprofessional conduct by persons licensed to practice massage therapy. (Code 1981, § 43-24A-2, enacted by Ga. L. 2005, p. 1251, § 1/SB 110.)

43-24A-3. Definitions.

As used in this chapter, the term:

(1) "Advertise" means, but is not limited to, the issuing of or causing to be distributed any card, sign, or other device or causing or permitting any sign or marking on or in any building or structure, or in any newspaper, magazine, or directory, or announcement on radio, or announcement or display on television, computer network, or electronic or telephonic medium.

(2) "Applicant" means any person seeking a license under this chapter.

(3) "Board" means the Georgia Board of Massage Therapy established by this chapter.

(4) "Board recognized massage program" means an educational program which meets the standards for training and curriculum as set out by the board in its rules which are consistent with the Nonpublic Postsecondary Education Commission as provided in Code Section 20-3-250.4.

(4.1) "Entity" means the owner or operator of a business where massage therapy for compensation is performed.

(5) "License" means a valid and current certificate of registration issued by the board.

(6) "Licensee" means any person holding a license.

(7) "Massage therapist" means a person who administers massage or massage therapy for compensation.

(8) “Massage therapy” means the application of a system of structured touch, pressure, movement, and holding to the soft tissue of the body in which the primary intent is to enhance or restore health and well-being. The term includes complementary methods, including without limitation the external application of water, superficial heat, superficial cold, lubricants, salt scrubs, or other topical preparations and the use of commercially available electromechanical devices which do not require the use of transcutaneous electrodes and which mimic or enhance the actions possible by the hands; the term also includes determining whether massage therapy is appropriate or contraindicated, or whether referral to another health care provider is appropriate. Massage therapy shall not include the use of ultrasound, fluidotherapy, laser, and other methods of deep thermal modalities.

(9) “Person” means a natural person only.

(10) “Provisionally permitted massage therapist” means a person issued a provisional permit under this chapter. (Code 1981, § 43-24A-3, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2010, p. 401, § 1/SB 364.)

The 2010 amendment, effective July 1, 2010, added paragraph (4.1). See editor’s note for applicability.

§ 7, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all offenses which occur on or after July 1, 2010.

Editor’s notes. — Ga. L. 2010, p. 401,

43-24A-4. The Georgia Board of Massage Therapy; creation; members; terms; reimbursement.

(a) There is created the Georgia Board of Massage Therapy which shall consist of five members. The board shall be assigned to the Secretary of State’s office for administrative purposes and shall be under the jurisdiction of the division director and shall operate in accordance with and pursuant to the provisions of Chapter 1 of this title, as applicable.

(b) The Governor shall appoint, subject to confirmation by the Senate, all members of the board for initial terms of office beginning July 1, 2005. The Governor shall appoint two initial members of the board to serve for terms of two years and three initial members of the board, including the public member, to serve for terms of four years. After the initial terms specified in this subsection, members of the board shall take office on the first day of July immediately following the expired term of that office and shall serve for a term of four years and until their successors are appointed and qualified. Any person appointed to the board when the Senate is not in session may serve on the board without Senate confirmation until the Senate acts on that appointment. No member shall serve on the board for more than two

full consecutive terms. Any vacancy due to death, resignation, removal, or otherwise shall be filled for the remainder of the unexpired term in the same manner as regular appointments.

(c) All members of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.

(d) An appointee to the board shall qualify by taking an oath of office within 15 days from the date of his or her appointment. On presentation of the oath, the Secretary of State shall issue a commission to each appointee as evidence of his or her authority to act as a member of the board. (Code 1981, § 43-24A-4, enacted by Ga. L. 2005, p. 1251, § 1/SB 110.)

43-24A-5. Qualifications of board members; removal.

(a)(1) There shall be four professional members of the board who shall:

(A) Be citizens of the United States and residents of this state for at least three years prior to the date of appointment;

(B) Have been engaged in massage therapy practice for compensation for at least five years immediately preceding their appointment; and

(C) Be eligible for licensure under this chapter. Effective July 1, 2006, and thereafter, all professional members of the board shall be licensed under this chapter.

(2) No more than one professional member of the board may be an owner of or affiliated with any massage school.

(b) There shall be one consumer member of the board who shall be appointed by the Governor from the public at large, shall be a citizen of the United States and resident of this state, and shall be a person to whom neither this state nor any other state or jurisdiction or organization has ever issued a certificate, registration, license, or permit to engage in the practice of massage therapy nor be an owner of or affiliated with any massage school.

(c) The Governor, after notice and opportunity for hearing, may remove any member of the board for incompetence, neglect of duty, unprofessional conduct, conviction of a felony, failure to meet the qualifications of this chapter, or committing any act prohibited by this chapter. (Code 1981, § 43-24A-5, enacted by Ga. L. 2005, p. 1251, § 1/SB 110.)

43-24A-6. Meetings of the board; officers and committees.

The board shall meet at least once each year at a time fixed by the board. At its annual meeting, the board shall elect from its members a

chairperson, vice chairperson, and any other officers as deemed necessary who shall hold office for a term of one year. Additionally, the board may appoint such committees as it considers necessary to fulfill its duties. In addition to its annual meeting, the board may hold additional meetings at the call of the chairperson or at the request of any two members of the board or as approved by the division director. (Code 1981, § 43-24A-6, enacted by Ga. L. 2005, p. 1251, § 1/SB 110.)

43-24A-7. Powers of the board.

(a) The board shall have the power to:

(1) Examine and determine the qualifications and fitness of applicants for licenses to practice massage therapy in this state;

(2) Issue, renew, refuse to renew, deny, suspend, or revoke licenses to practice massage therapy in this state or otherwise discipline licensed massage therapists;

(3) Conduct investigations for the purpose of discovering violations of this chapter or grounds for disciplining persons or entities acting in violation of this chapter;

(4) Hold hearings on all matters properly brought before the board and, in conjunction therewith, to administer oaths, receive evidence, make the necessary determinations, and enter orders consistent with the findings. The board may designate one or more of its members as its hearing officer;

(5) Adopt, revise, and enforce rules concerning advertising by licensees including, but not limited to, rules to prohibit false, misleading, or deceptive practices;

(6) Adopt an official seal; and

(7) Bring proceedings to the courts for the enforcement of this chapter or any rules and regulations promulgated pursuant to this chapter.

(b) In addition to the enumerated powers in subsection (a) of this Code section, the board has the authority to conduct its business pursuant to the provisions of Code Section 43-1-19 which is incorporated herein and made a part of this chapter by specific reference. (Code 1981, § 43-24A-7, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2010, p. 401, § 2/SB 364.)

The 2010 amendment, effective July 1, 2010, substituted “or entities acting in violation of” for “licensed under” in paragraph (a)(3). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2010, p. 401, § 7, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all offenses which occur on or after July 1, 2010.

43-24A-8. Licensure of massage therapists; application and requirements.

(a) No person may practice massage therapy in this state who is not a licensed massage therapist or the holder of a valid provisional permit issued by the division director pursuant to this chapter.

(b) Prior to July 1, 2007, any applicant for a license as a massage therapist must submit a completed application upon a form and in such manner as the board prescribes, accompanied by applicable fees, and evidence satisfactory to the board that:

(1) The applicant is at least 18 years of age;

(2) The applicant is of good moral character. For purposes of this paragraph, "good moral character" means professional integrity and a lack of any conviction for acts involving moral turpitude where the underlying conduct relates to the applicant's fitness to practice massage therapy;

(3) The applicant agrees to provide the board with any and all information necessary to perform a criminal background check and expressly consents and authorizes the board or its representative to perform such a check; and

(4) The applicant has met at least one of the following requirements:

(A) He or she has completed successfully a board recognized educational program with a minimum of 500 hours of course and clinical work;

(B) He or she has passed satisfactorily the National Certification Examination for Therapeutic Massage and Bodywork, an equivalent test approved by the board, or an examination administered by another state or jurisdiction whose license requirements meet or exceed those of this state;

(C) He or she meets the qualifications necessary to sit for the National Certification Examination for Therapeutic Massage and Bodywork or has substantially similar qualifications as determined by the board;

(D) He or she holds a license as a massage therapist in another state or jurisdiction whose license requirements meet or exceed the licensing requirements of this state;

(E) He or she has practiced massage therapy for at least ten hours per week on average for at least ten years prior to the date of application and has completed at least 100 hours of formal training in massage therapy as determined by the board;

(F) He or she has practiced massage therapy for at least five years prior to the date of application and has completed a minimum of 200 hours of formal training in massage therapy as determined by the board;

(G) He or she has, to the satisfaction of the board, training in another state or jurisdiction that meets or exceeds the requirements for licensing in this state;

(H) He or she has been a member, as a massage therapist, for a period of one year prior to his or her application for licensure of a professional massage therapy association established before 2002 which holds its members to a published code of ethics; or

(I) He or she has been legally practicing massage therapy in this state for compensation prior to July 1, 2005.

(c) On and after July 1, 2007, any applicant for a license as a massage therapist must submit a completed application upon a form and in such manner as the board prescribes, accompanied by applicable fees, and evidence satisfactory to the board that:

(1) The applicant is at least 18 years of age;

(2) The applicant has a high school diploma or its recognized equivalent;

(3) The applicant is a citizen of the United States or a permanent resident of the United States;

(4) The applicant is of good moral character. For purposes of this paragraph, "good moral character" means professional integrity and a lack of any conviction for acts involving moral turpitude where the underlying conduct relates to the applicant's fitness to practice massage therapy;

(5) The applicant agrees to provide the board with any and all information necessary to perform a criminal background check and expressly consents and authorizes the board or its representative to perform such a check;

(6) The applicant has completed successfully a board recognized educational program consisting of a minimum of 500 hours of course and clinical work; and

(7) The applicant has passed satisfactorily the National Certification Examination for Therapeutic Massage and Bodywork, an equivalent test approved by the board, or an examination administered by another state or jurisdiction whose license requirements meet or exceed those of this state. (Code 1981, § 43-24A-8, enacted by Ga. L. 2005, p. 1251, § 1/SB 110.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, double quotes were substituted for single quotes in paragraph (c)(4).

43-24A-9. Provisional permits.

(a) A provisional permit to practice as a provisionally permitted massage therapist may be issued for a two-year period by the board to the following applicants:

(1) An applicant licensed in another state with like or similar requirements for licensure; or

(2) An applicant who is not the holder of any massage therapy license.

(b) Such permit shall authorize the applicant to work under the supervision of a licensed massage therapist as provided by the board.

(c) The applicant, by submitting an application for a provisional permit, agrees to provide the board with any and all information necessary to perform a criminal background check and expressly consents and authorizes the board or its representative to perform such a check.

(d) Such provisional permit shall have the same force and effect as a permanent license until the time of its expiration.

(e) The provisional permit shall expire on the same date as a permanent license that is issued to persons who have passed the examination. (Code 1981, § 43-24A-9, enacted by Ga. L. 2005, p. 1251, § 1/SB 110.)

43-24A-10. Applications under oath.

The board may require that all applications be made under oath. (Code 1981, § 43-24A-10, enacted by Ga. L. 2005, p. 1251, § 1/SB 110.)

43-24A-11. Licensing examinations.

(a) Examinations shall be administered to qualified applicants at least twice each calendar year.

(b) Applicants may obtain their examination scores in accordance with such rules and regulations as the board may establish. (Code 1981, § 43-24A-11, enacted by Ga. L. 2005, p. 1251, § 1/SB 110.)

43-24A-12. License by reciprocity.

Reserved. Repealed by Ga. L. 2008, p. 1112, § 16, effective July 1, 2008.

Editor's notes. — This Code section was based on Ga. L. 2005, p. 1251, § 1/SB 110.

43-24A-13. License by endorsement.

Any applicant for a license by endorsement as a massage therapist must submit a completed application upon a form and in such manner as the board prescribes, accompanied by applicable fees, and evidence satisfactory to the board that:

(1) The applicant is at least 18 years of age;

(2) The applicant is of good moral character. For purposes of this paragraph, "good moral character" means professional integrity and a lack of any conviction for acts involving moral turpitude where the underlying conduct relates to the applicant's fitness to practice massage therapy;

(3) The applicant agrees to provide the board with any and all information necessary to perform a criminal background check and expressly consents and authorizes the board or its representative to perform such a check; and

(4) The applicant is currently licensed as a massage therapist in another jurisdiction, state, or territory of the United States or foreign country which requires standards for licensure considered by the board to be equivalent to the requirements for licensure under this chapter. (Code 1981, § 43-24A-13, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2008, p. 1112, § 17/HB 1055.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, the subsection (a) designation was deleted at the beginning of this Code section since this

Code section was enacted without a subsection (b) and double quotes were substituted for single quotes in paragraph (2).

43-24A-14. Display of the license certificate; expiration and renewal of licenses; change of address; inactive status.

(a) The licensee shall display the license certificate or a photocopy thereof in an appropriate and public manner at each location at which he or she practices.

(b) All licenses shall expire biennially unless renewed. All applications for renewal of a license shall be filed with the division director prior to the expiration date, accompanied by the biennial renewal fee prescribed by the board and certifying that all current requirements of continuing education as determined by the board have been fulfilled. The board shall provide for penalty fees for late registration. The failure

to renew a license by the end of an established penalty period shall have the same effect as a revocation of said license, subject to reinstatement only after application and payment of the prescribed reinstatement fee within the time period established by the division director, provided that the applicant meets such requirements as the board may establish by rule.

(c) The licensee shall inform the board of any change of address within 30 days.

(d) Each person licensed under this chapter is responsible for renewing his or her license before the expiration date.

(e) Under procedures and conditions established by the board, a licensee may request that his or her license be declared inactive. The licensee may apply for active status at any time and upon meeting the conditions set forth by the board shall be declared active. (Code 1981, § 43-24A-14, enacted by Ga. L. 2005, p. 1251, § 1/SB 110.)

43-24A-15. Unlawful acts.

(a) It shall be a violation of this chapter for any person or entity to advertise massage therapy services or to advertise the offering of massage therapy services unless such services are provided by a person who holds a valid license under this chapter.

(b) It shall be a violation of this chapter for any person to advertise:

(1) As a massage therapist unless the person holds a valid license under this chapter in the classification so advertised; or

(2) Massage therapy services combined with escort or dating services or adult entertainment.

(c) It shall be a violation of this chapter for a person or entity, or the employees, agents, or representatives of such person or entity, to practice massage therapy or to use in connection with such person's or entity's name or business activity the terms "massage," "massage therapy," "massage therapist," "massage practitioner," or the letters "M.T.," "L.M.T.," or any other words, letters, abbreviations, or insignia indicating or implying directly or indirectly that massage therapy is provided or supplied unless such massage therapy is provided by a massage therapist licensed and practicing in accordance with this chapter.

(d) It shall be a violation of this chapter for any entity to:

(1) Advertise the offering of massage therapy services combined with escort or dating services or adult entertainment; or

(2) Employ unlicensed massage therapists to perform massage therapy.

(e) It shall be a violation of this chapter for any person to practice massage therapy without holding a current or provisional license as a massage therapist in accordance with subsection (a) of Code Section 43-24A-8.

(f) It shall be a violation of this chapter for any person or entity, or the employees, agents, or representatives of such person or entity, to render or offer massage therapy services for compensation unless such massage therapy is provided by a licensed massage therapist. (Code 1981, § 43-24A-15, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2010, p. 401, § 3/SB 364.)

The 2010 amendment, effective July 1, 2010, in subsection (a), substituted “It shall be” for “It is” at the beginning, inserted “or entity”, and inserted “or to advertise the offering of massage therapy services”; in subsection (c), substituted “It shall be a violation of this chapter for a person or entity, or the employees, agents, or representatives of such person or entity,” for “It shall be unlawful for a person

or business entity or its employees, agents, or representatives”, and substituted “such person’s or entity’s” for “its”; and added subsections (d) through (f). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2010, p. 401, § 7, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all offenses which occur on or after July 1, 2010.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Offense arising from a violation of subsection(d) of O.C.G.A. § 43-24A-15

does not appear to be an offense for which fingerprinting is required. 2010 Op. Att’y Gen. No. 10-6.

43-24A-16. Practice of massage therapy without a license; injunctions.

The practice of massage therapy is declared to be an activity affecting the public interest and involving the health, safety, and welfare of the public. Such practice by a person who is not licensed to practice in this state is declared to be a public nuisance, harmful to the public health, safety, and welfare. Any citizen of this state, the board, or the appropriate prosecuting attorney where such practice is carried on by such unlicensed person may, on behalf of the public, bring an action to restrain and enjoin such unlicensed practice in the superior court of the county where such unlicensed person resides or works. It shall not be necessary in order to obtain an injunction under this Code section to allege or prove that there is no adequate remedy at law or to allege or prove any special injury. (Code 1981, § 43-24A-16, enacted by Ga. L. 2005, p. 1251, § 1/SB 110.)

43-24A-17. Disciplinary action.

(a) The board may take any one or more of the following actions against a person or entity found by the board to have committed a violation of this chapter:

- (1) Reprimand or place the licensee on probation;
- (2) Revoke or suspend the license or deny the issuance or renewal of a license;
- (3) Impose an administrative fine not to exceed \$500.00 for each violation; and
- (4) Assess costs against the violator for expenses relating to the investigation and administrative action.

(b) The board may assess collection costs and interest for the collection of fines imposed under this chapter against any person or entity that fails to pay a fine as directed by the board. (Code 1981, § 43-24A-17, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2010, p. 401, § 4/SB 364.)

The 2010 amendment, effective July 1, 2010, substituted the present provisions of this Code section for the former provisions, which read: "The board shall take disciplinary action in accordance with the provisions of Chapter 1 of this title." See editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 401, § 7, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all offenses which occur on or after July 1, 2010.

43-24A-18. Administrative procedures.

Proceedings under this chapter shall be governed by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Code 1981, § 43-24A-18, enacted by Ga. L. 2005, p. 1251, § 1/SB 110.)

43-24A-19. Exceptions.

Nothing in this chapter shall be construed to affect, restrict, or prevent the practice, services, or activities of:

- (1) A person licensed, registered, or certified under any other chapter or article under Title 43 while engaged in the professional or trade practices properly conducted under authority of such other licensing laws, provided that such person shall not use the title of massage therapist;
- (2) A person pursuing a course of study leading to a degree or certificate as a massage therapist in an educational program recognized by the board, if such person is designated by title indicating

student status and is fulfilling uncompensated work experiences required for the attainment of the degree or certificate;

(3) A nonresident person rendering massage therapy up to 60 days during a 12 month period for treatment of a temporary sojourner only, provided that such nonresident massage therapist holds a license, registration, or certification from another state, jurisdiction, or country if the requirements as determined by the board for licensure are substantially equal to the requirements contained in this chapter or provided that such nonresident massage therapist is currently nationally certified in therapeutic massage and bodywork;

(4) A person duly licensed, registered, or certified in another jurisdiction, state, territory, or a foreign country when incidentally in this state to provide service as part of an emergency response team working in conjunction with disaster relief officials or as part of a charity event with which he or she comes into the state;

(5) A person who restricts his or her practice to the manipulation of the soft tissue of the human body to hands, feet, or ears who does not have the client disrobe and does not hold himself or herself out as a massage therapist;

(6) A person who uses touch, words, and directed movement to deepen awareness of existing patterns of movement in the body as well as to suggest new possibilities of movement while engaged within the scope of practice of a profession with established standards and ethics, provided that his or her services are not designated or implied to be massage or massage therapy;

(7) A person who uses touch and movement education to effect change in the structure of the body while engaged in the practice of structural integration, provided that he or she is a member of, or whose training would qualify for membership in, the International Association of Structural Integrators and provided that his or her services are not designated or implied to be massage or massage therapy;

(8) A person who uses touch to affect the energy systems, polarity, acupoints, or Qi meridians, also known as channels of energy, of the human body while engaged within the scope of practice of a profession with established standards and ethics, provided that his or her services are not designated or implied to be massage or massage therapy; or

(9) A person who was engaged in massage therapy practice prior to July 1, 2005; provided, however, the prohibition of subsection (c) of Code Section 43-24A-15 shall apply to such a person on and after July 1, 2007. (Code 1981, § 43-24A-19, enacted by Ga. L. 2005, p. 1251, § 1/SB 110.)

43-24A-20. Continuing education requirements.

The board shall establish continuing education requirements not to exceed 25 hours per biennium. The board shall by rule establish criteria for the approval of continuing education programs or courses. The programs or courses approved by the board may include correspondence courses that meet the criteria for continuing education courses. (Code 1981, § 43-24A-20, enacted by Ga. L. 2005, p. 1251, § 1/SB 110.)

Administrative rules and regulations. — Continuing education hours, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia

Board of Massage Therapy, License Renewal, Continuing Education, Inactive Status, and Reinstatement of License, R. 345-4-.02.

43-24A-21. Proceedings for a restraining order, injunction, or writ of mandamus.

As cumulative to any other remedy or criminal prosecution, the board may file a proceeding in the name of the state seeking issuance of a restraining order, injunction, or writ of mandamus against any person who is or has been violating any of the provisions of this chapter or the lawful rules or orders of the board. (Code 1981, § 43-24A-21, enacted by Ga. L. 2005, p. 1251, § 1/SB 110.)

43-24A-22. Local regulation.

(a) This chapter shall not be construed to prohibit a county or municipality from enacting any regulation of persons not licensed pursuant to this chapter. Any place of business where massage therapy for compensation is performed shall also be subject to regulation by local governing authorities.

(b) No provision of any ordinance enacted by a municipality, county, or other jurisdiction that relates to the practice of massage therapy or requires licensure of a massage therapist may be enforced against a person who is issued a license by the board under this chapter. (Code 1981, § 43-24A-22, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2010, p. 401, § 5/SB 364.)

The 2010 amendment, effective July 1, 2010, added the subsection designations; added the last sentence to subsection (a); and deleted “that is in effect before July 1, 2005, and” following “or other jurisdiction” in subsection (b). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2010, p. 401, § 7, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all offenses which occur on or after July 1, 2010.

43-24A-23. Taxation as a health care activity.

Notwithstanding any provision of law to the contrary, the act of a duly licensed massage therapist in performing a massage shall be deemed to be the act of a health care professional and shall not be subject to the collection of any form of state or local taxation regulations not also imposed on other professional health care activities. (Code 1981, § 43-24A-23, enacted by Ga. L. 2005, p. 1251, § 1/SB 110.)

43-24A-24. Fines and punishments for violations.

(a) Any person who acts in violation of Code Section 43-24A-15, upon conviction thereof, shall be punished as provided in this Code section.

(b) Each act of unlawful practice under this Code section shall constitute a distinct and separate offense.

(c) Upon being convicted a first time under this Code section, such person or entity shall be guilty of and shall be punished as for a misdemeanor for each offense. Upon being convicted a second time under this Code section, such person or entity shall be guilty of and shall be punished as for a misdemeanor of a high and aggravated nature. Upon being convicted a third or subsequent time under this Code section, such person or entity shall be guilty of a felony and shall be punished by a fine of not more than \$25,000.00 for each offense, imprisonment for not less than one nor more than five years, or both. (Code 1981, § 43-24A-24, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2010, p. 401, § 6/SB 364.)

The 2010 amendment, effective July 1, 2010, in subsection (a), substituted “acts in violation of Code Section 43-24A-15” for “practices massage therapy without a valid license in violation of this chapter”; and, in subsection (c), in the first sentence, substituted “or entity shall be guilty of and shall be punished as for a misdemeanor” for “shall be punished by a fine of not more than \$500.00”, added the present second sentence, and in the last sentence, substituted “third” for “second”,

inserted “or entity”, inserted “guilty of a felony and shall be”, substituted “\$25,000.00” for “\$1,000.00”, and substituted “less than one nor more than five years” for “more than 12 months” at the end. See editor’s note for applicability.

Editor’s notes. — Ga. L. 2010, p. 401, § 7, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all offenses which occur on or after July 1, 2010.

CHAPTER 25

OPERATORS OF MOTOR VEHICLE RACETRACKS

Sec.		Sec.	
43-25-1.	"Motor vehicle" defined.	43-25-6.	Duration of licenses.
43-25-2.	Requirement of license for persons conducting motor vehicle races.	43-25-7.	Suspension or revocation of licenses.
43-25-3.	Application for license; fee.	43-25-8.	Promulgation of rules and regulations by Safety Fire Commissioner.
43-25-4.	Compliance with Safety Fire Commissioner's regulations; insurance or bond.	43-25-9.	Reports of damage to guardrails, posts, or other safety devices.
43-25-5.	Cancellation of insurance or bonds.	43-25-10.	Penalty.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614,

615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Automobile racetrack or drag strip as nuisance, 41 ALR3d 1273.

Liability for injury or death of participant in automobile or horse race at public track, 13 ALR4th 623.

43-25-1. "Motor vehicle" defined.

As used in this chapter, the term "motor vehicle," shall not be construed to include any motorcycle or other two-wheeled, self-propelled vehicle, nor shall it be construed to include any motor vehicle weighing less than 500 pounds. (Ga. L. 1969, p. 870, § 8.)

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, § 1.

ALR. — Judicial review of administrative ruling affecting conduct or outcome of

publicly regulated horse, dog, or motor vehicle race, 36 ALR4th 1169.

43-25-2. Requirement of license for persons conducting motor vehicle races.

It shall be unlawful for any person, firm, or corporation to operate or conduct any motor vehicle race on any permanent racetrack or other place where such races are to be held unless there shall first be obtained a license to operate or conduct such races from the Safety Fire Commissioner. (Ga. L. 1969, p. 870, § 1; Ga. L. 1993, p. 725, § 1.)

RESEARCH REFERENCES

C.J.S. — 61A C.J.S., Motor Vehicles, § 571.

ALR. — Validity of license tax or fee on show or place of amusement, 58 ALR 1340; 111 ALR 778.

Right of one who acquires title to, or other interest in, real property to benefit of a license previously issued by the public, permitting use of property for a specified purpose, 131 ALR 1339.

43-25-3. Application for license; fee.

Application for a license to operate or conduct a racetrack or other place for the holding of motor vehicle races or exhibitions shall be made in writing to the Safety Fire Commissioner on a form prescribed by or furnished by the Safety Fire Commissioner. The application form shall require a full and complete address of the track or other place desired to be licensed, the name and address of the licensee, and the name and address of the promoter of such race or exhibition and shall contain such further information as the Safety Fire Commissioner may require in order to comply with Code Section 43-25-4. Such application shall be accompanied by a nonrefundable fee of \$150.00. (Ga. L. 1969, p. 870, § 4; Ga. L. 1993, p. 725, § 1; Ga. L. 2010, p. 9, § 1-83/HB 1055.)

The 2010 amendment, effective May 12, 2010, substituted “\$150.00” for “\$100.00” at the end of the last sentence.

43-25-4. Compliance with Safety Fire Commissioner’s regulations; insurance or bond.

No license for operating or conducting a motor vehicle racetrack shall be issued by the Safety Fire Commissioner until the applicant has complied with the rules and regulations of the Safety Fire Commissioner pursuant to Code Section 43-25-8 and has a valid public liability insurance policy with minimum limits of \$1 million per accident and \$100,000.00 per person per accident, or \$1 million combined single limit, or in lieu thereof a valid public liability bond in like amount. The policy or bond shall be designed to provide coverage for the protection of the licensee from any legal liability arising out of bodily injury, including death, to any member of the general public, resulting from

any racing event. The insurance policy or bond shall not be designed to provide coverage for bodily injuries or death of drivers of motor vehicles which are engaged in any race, any pit area personnel, or any person who is involved in the conduct of a race. The policy or bond shall be written by a company which is licensed to do business in this state or which is considered to be acceptable by the Safety Fire Commissioner. (Ga. L. 1969, p. 870, § 2; Ga. L. 1971, p. 562, § 1; Ga. L. 1993, p. 725, § 1.)

RESEARCH REFERENCES

C.J.S. — 61A C.J.S., Motor Vehicles, §§ 571, 573, 577.

ALR. — Liability of operators or sponsors of soapbox derby for personal injury, 72 ALR2d 1137.

Liability for injury or death of participant in automobile or horse race at public track, 13 ALR4th 623.

43-25-5. Cancellation of insurance or bonds.

No insurance policy or bond may be canceled for any reason unless and until the Safety Fire Commissioner has received notice by certified or registered letter, return receipt requested, that the policy or bond is going to be canceled effective on a date at least 14 days from the date such notice is received by the Safety Fire Commissioner. (Ga. L. 1969, p. 870, § 3; Ga. L. 1993, p. 725, § 1.)

43-25-6. Duration of licenses.

All licenses granted by the Safety Fire Commissioner pursuant to this chapter shall expire December 31 of each year. (Ga. L. 1969, p. 870, § 5; Ga. L. 1993, p. 725, § 1.)

43-25-7. Suspension or revocation of licenses.

The Safety Fire Commissioner is authorized to suspend or revoke the license of any person who operates or conducts motor vehicle races or exhibitions without complying with this chapter. (Ga. L. 1969, p. 870, § 6; Ga. L. 1993, p. 725, § 1.)

43-25-8. Promulgation of rules and regulations by Safety Fire Commissioner.

The Safety Fire Commissioner is authorized and directed to create and promulgate rules and regulations which are to be designed to prevent injury and loss of life to spectators while they are observing and viewing motor vehicles engaged in contests of speed or endurance. Such rules and regulations shall provide for certificates of occupancy; peri-

odic inspections by fire inspectors and other experts; corrections of deficiencies in racetrack facilities; standards for grandstands; guardrails; spectator areas; nonspectator areas; flagmen; track surfaces; fences; ambulance service; access highways or roads; fire extinguishers and other fire suppression equipment and personnel; plans for fire evacuation; accident reporting; damage reporting; storage of flammable and combustible liquids; restricted areas; concession areas; and such other areas of coverage as, in the opinion of the Safety Fire Commissioner, are deemed necessary. (Ga. L. 1971, p. 562, § 2.)

Administrative rules and regulations. — Rules and regulations for fire safety inspection and certification of motor vehicle racetracks and grand stands,

Official Compilation of the Rules and Regulations of the State of Georgia, Comptroller General, Safety Fire Commissioner, Chapter 120-3-18.

RESEARCH REFERENCES

C.J.S. — 61A C.J.S., Motor Vehicles, § 571.
ALR. — Liability of owner or operator of auto race track for injury to patron, 37 ALR2d 391.

Judicial review of administrative ruling affecting conduct or outcome of publicly regulated horse, dog, or motor vehicle race, 36 ALR4th 1169.

43-25-9. Reports of damage to guardrails, posts, or other safety devices.

The owner or lessee of any real property upon which exists a motor vehicle racetrack or other place subject to this chapter shall inform the Safety Fire Commissioner within ten days of any damage caused to any guardrail, post, or other device which has for its purpose the prevention of injury or loss of life to spectators at the racetrack or other place. Until any such damage is repaired and the repairs are approved by fire inspectors, there shall be no racing or endurance event permitted on such racetrack or other place. (Ga. L. 1971, p. 562, § 2.)

43-25-10. Penalty.

Any person who violates any provision of this chapter shall be guilty of a misdemeanor of a high and aggravated nature. (Ga. L. 1969, p. 870, § 7; Ga. L. 1971, p. 562, § 3.)

CHAPTER 26

NURSES

Article 1

Georgia Registered Professional Nurse Practice Act

Sec.

- 43-26-1. Short title.
- 43-26-2. Legislative intent.
- 43-26-3. Definitions.
- 43-26-4. Georgia Board of Nursing; membership; meetings; officers.
- 43-26-5. General powers of board.
- 43-26-6. Use of certain titles and abbreviations by licensed nurses.
- 43-26-7. Requirements for licensure as registered professional nurse; requirements for nontraditional nursing education program.
- 43-26-8. Temporary permits.
- 43-26-9. Biennial renewal of licenses; voluntary surrender or failure to renew license; restoration and reissuance of license.
- 43-26-10. Practicing as a registered professional nurse without a license prohibited.
- 43-26-11. Denial or revocation of licenses; other discipline.
- 43-26-11.1. Administration of anesthesia by certified registered nurse anesthetist.
- 43-26-12. Exceptions to operation of article; burden of proof.
- 43-26-13. Certain information given to the board by licensees.

Article 2

Licensed Practical Nurses

- 43-26-30. Short title.

Sec.

- 43-26-31. Purpose of article.
- 43-26-32. Definitions.
- 43-26-33. Use of titles and abbreviations by licensed practical nurses and applicants.
- 43-26-34. Board of examiners created; appointment of members; terms; filling of vacancies; meetings; reimbursement of expenses.
- 43-26-35. Duties of board generally.
- 43-26-36. Application for licensure; examination; temporary permits.
- 43-26-36.1. Fingerprint record and criminal background checks for applicants for licensure; fees.
- 43-26-37. Issuance of license upon passing examination; requirements for admission to subsequent examination.
- 43-26-38. License by endorsement; temporary permit.
- 43-26-39. Renewal of license; voluntary surrender; application for reinstatement; temporary permit.
- 43-26-40. Refusal to grant license; revocation of license; disciplining of licensees.
- 43-26-41. Exceptions to licensure requirements; burden of proof.
- 43-26-42. Criminal violations.
- 43-26-43. Termination [Repealed].

Article 3

Georgia Qualified Medication Aide

- 43-26-50 through 43-26-60. [Repealed].

JUDICIAL DECISIONS

Cited in Leonard v. Preferred Risk Mut. Ins. Co., 247 Ga. 574, 277 S.E.2d 675 (1981).

OPINIONS OF THE ATTORNEY GENERAL

Licensed nurses performing nursing services in private home are not performing "domestic services".

— Licensed nurses (registered professional nurses or licensed practical nurses) performing nursing services within the scope

of their statutory authority in a private home for wages are not performing "domestic services" nor do the services constitute employment within the meaning of O.C.G.A. Ch. 8, T. 34. 1980 Op. Att'y Gen. No. 80-34.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 39 Am. Jur. 2d, Health, §§ 1 et seq., 26 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 39A C.J.S., Health and Environment, §§ 3 et seq., 37 et seq.,

48 et seq. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

Applicability, in action against nurse in her professional capacity, of statute of limitations applicable to malpractice, 8 ALR3d 1336.

Medical malpractice: who are "health care providers," or the like, whose actions fall within statutes specifically governing actions and damages for medical malpractice, 12 ALR5th 1.

ARTICLE 1

GEORGIA REGISTERED PROFESSIONAL NURSE PRACTICE ACT

Editor's notes. — Ga. L. 1990, p. 747, § 1, effective April 4, 1990, repealed the Code sections formerly codified as this article and enacted the current article. The former article consisted of Code Sections 43-26-1 through 43-26-13. Former Article 1 of this chapter was based on Ga. L. 1927, p. 247, §§ 1, 2, 4-6, 8, 11, 13, 14; Code 1933, §§ 84-1001—1009, 84-1011—1015, 84-9915, 84-9916; Ga. L. 1946, p. 89,

§ 1; Ga. L. 1956, p. 193, §§ 1, 4; Ga. L. 1956, p. 691, §§ 4, 5; Ga. L. 1966, p. 289, § 1; Ga. L. 1973, p. 433, §§ 1-3; Ga. L. 1974, p. 496, §§ 1, 2; Ga. L. 1976, p. 1361, § 1; Ga. L. 1978, p. 1635, § 1; Ga. L. 1979, p. 380, §§ 1, 2; Ga. L. 1982, p. 3, § 43; Ga. L. 1982, p. 2500, §§ 1-3; Ga. L. 1983, p. 3, § 32; Ga. L. 1985, p. 3, § 32; Ga. L. 1988, p. 530, § 4.

43-26-1. Short title.

This article shall be known and may be cited as the "Georgia Registered Professional Nurse Practice Act." (Code 1981, § 43-26-1, enacted by Ga. L. 1990, p. 747, § 1.)

Administrative rules and regulations. — Organization and administration, general requirements, Official Com-

pilation of the Rules and Regulations of the State of Georgia, Georgia Board of Nursing, Chapter 410-1.

JUDICIAL DECISIONS

Cited in *Hyde v. State*, 189 Ga. App. 727, 377 S.E.2d 187 (1988); *Grady Gen.*

Hosp. v. King, 288 Ga. App. 101, 653 S.E.2d 367 (2007).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, Ch. 84-9 and § 84-1001 are included in the annotations for this Code section.

Nurse may perform some acts considered practice of medicine when so directed by physician. — Unless specifically precluded by law, a nurse may perform a multitude of acts which may be construed as practice of medicine as long as those acts are prescribed by a physician practicing medicine. 1979 Op. Att'y Gen. No. 79-32 (decided under former Code 1933, § 84-1001).

Nurse may give medical treatments and medication. — Administration of medication and medical treatments by licensed nurse, when prescribed by a physician practicing medicine does not constitute proscribed practice of medicine. 1979 Op. Att'y Gen. No. 79-2 (decided under former Code 1933, Ch. 84-9).

Nurses may telephone prescription orders into pharmacy after receiving order from practitioner of healing arts. 1979 Op. Att'y Gen. No. 79-32 (decided under former Code 1933, § 84-1001).

Nurses may not write or telephone in prescriptions by referring to written protocol. 1988 Op. Att'y Gen. No. 88-9 (decided under former law).

Licensed nurses acting within scope of statutory authority are not performing "domestic services". — It does not appear that licensed nurses (registered professional nurses or licensed practical nurses) acting within the scope of their statutory authority are performing "domestic services" within the meaning of Ga. L. 1937, p. 806, § 19 (see O.C.G.A. § 34-8-40). 1980 Op. Att'y Gen. No. 80-34 (decided under former Code 1933, § 84-1001).

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 7, et seq.

C.J.S. — 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers, § 1 et seq.

ALR. — Validity and construction of domestic service provisions of fair labor standards act (29 U.S.C.A. § 201 et seq.), 165 ALR Fed. 163.

43-26-2. Legislative intent.

The purpose of this article is to protect, promote, and preserve the public health, safety, and welfare through legislative regulation and control of registered professional nursing education and practice. This article ensures that any person practicing or offering to practice nursing or using the title registered professional nurse, as defined in this article, within the State of Georgia, shall be licensed as provided in this article. (Code 1981, § 43-26-2, enacted by Ga. L. 1990, p. 747, § 1.)

43-26-3. Definitions.

As used in this article, the term:

(1) “Advanced nursing practice” means practice by a registered professional nurse who meets those educational, practice, certification requirements, or any combination of such requirements, as specified by the board and includes certified nurse midwives, nurse practitioners, certified registered nurse anesthetists, clinical nurse specialists in psychiatric/mental health, and others recognized by the board.

(1.1) “Advanced practice registered nurse” means a registered professional nurse licensed under this chapter who is recognized by the board as having met the requirements established by the board to engage in advanced nursing practice and who holds a master’s degree or other graduate degree from an approved nursing education program and national board certification in his or her area of specialty, or a person who was recognized as an advanced practice registered nurse by the board on or before June 30, 2006. This paragraph shall not be construed to require a certified registered nurse anesthetist who graduated from an approved nurse anesthetist educational program prior to January 1, 1999, to hold a master’s degree or other graduate degree.

(1.2) “Approved nursing education program” located in this state means a nursing education program approved by the board as meeting criteria established by the board. An “approved nursing education program” located outside this state means a nursing education program that the board has determined to meet criteria similar to and not less stringent than criteria established by the board. In order to be approved by the board, a nursing education program must be one that is offered by:

(A) A unit of the University System of Georgia accredited by the Commission on Colleges of the Southern Association of Colleges and Schools;

(B) An institution of the Technical College System of Georgia accredited by the Commission on Colleges of the Southern Association of Colleges and Schools;

(C) A nonprofit postsecondary institution of higher education that is accredited by a regional accrediting agency recognized by the United States Department of Education;

(D) A proprietary institution of higher education that is accredited by a regional accrediting agency recognized by the United States Department of Education; or

(E) A nonprofit postsecondary institution of higher education that is a four-year institution that is not accredited in accordance with subparagraph (C) of this paragraph, but whose curriculum has been determined by the board to meet criteria similar to and not less stringent than criteria established by the board for other approved nursing education programs.

(2) "Board" means the Georgia Board of Nursing created in Code Section 43-26-4.

(3) "Consumer member" means a United States citizen and Georgia resident who is knowledgeable about consumer health concerns, does not derive that person's primary livelihood from the practice of nursing, and shall neither be, nor ever have been, a health care provider or enrolled in any health related educational program.

(4) "License" means a current document, issued by the board, permitting a person to practice nursing as a registered professional nurse or a licensed undergraduate nurse.

(5) "Licensure" means the bestowing of a current license by the board permitting a person to practice nursing as a registered professional nurse or a licensed undergraduate nurse.

(6) "Practice nursing" or "practice of nursing" means to perform for compensation or the performance for compensation of any act in the care and counsel of the ill, injured, or infirm, and in the promotion and maintenance of health with individuals, groups, or both throughout the life span. It requires substantial specialized knowledge of the humanities, natural sciences, social sciences, and nursing theory as a basis for assessment, nursing diagnosis, planning, intervention, and evaluation. It includes, but is not limited to, provision of nursing care; administration, supervision, evaluation, or any combination thereof, of nursing practice; teaching; counseling; the administration of medications and treatments as prescribed by a physician practicing medicine in accordance with Article 2 of Chapter 34 of this title, or a dentist practicing dentistry in accordance with Chapter 11 of this title, or a podiatrist practicing podiatry in accordance with Chapter 35 of this title.

(7) "Practice nursing as a licensed undergraduate nurse" means to practice nursing by performing for compensation selected acts in the care of the ill, injured, or infirm under the direction of a registered professional nurse, a physician practicing medicine in accordance with Article 2 of Chapter 34 of this title, a dentist practicing dentistry in accordance with Chapter 11 of this title, or a podiatrist practicing podiatry in accordance with Chapter 35 of this title.

(8) "Practice nursing as a registered professional nurse" means to practice nursing by performing for compensation any of the following:

- (A) Assessing the health status of individuals, groups, or both throughout the life span;
- (B) Establishing a nursing diagnosis;
- (C) Establishing nursing goals to meet identified health care needs;
- (D) Planning, implementing, and evaluating nursing care;
- (E) Providing for safe and effective nursing care rendered directly or indirectly;
- (F) Managing and supervising the practice of nursing;
- (G) Collaborating with other members of the health care team in the management of care;
- (H) Teaching the theory and practice of nursing;
- (I) Administering, ordering, and dispensing medications, diagnostic studies, and medical treatments authorized by protocol, when such acts are authorized by other general laws and such acts are in conformity with those laws;
- (J) Administering medications and treatments as prescribed by a physician practicing medicine in accordance with Article 2 of Chapter 34 of this title, a dentist practicing dentistry in accordance with Chapter 11 of this title, or a podiatrist practicing podiatry in accordance with Chapter 35 of this title; or
- (K) Performing any other nursing act in the care and counsel of the ill, injured, or infirm, and in the promotion and maintenance of health with individuals, groups, or both throughout the life span.

(9) “Registered professional nurse” means a person who is authorized by a license issued under this article to practice nursing as a registered professional nurse. (Code 1981, § 43-26-3, enacted by Ga. L. 1990, p. 747, § 1; Ga. L. 1994, p. 97, § 43; Ga. L. 2006, p. 125, § 3/SB 480; Ga. L. 2007, p. 460, § 1/SB 222; Ga. L. 2009, p. 210, § 1/HB 475; Ga. L. 2011, p. 779, § 1/SB 100)

The 2009 amendment, effective April 29, 2009, in paragraph (1.1), substituted “from an approved nursing education program” for “approved by the board” in the middle of the first sentence, and added paragraph (1.2).

The 2011 amendment, effective May 13, 2011, deleted “or” at the end of subparagraph (1.2)(C); substituted “; or” for a period at the end of subparagraph

(1.2)(D); and added subparagraph (1.2)(E).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2007, “specialty” was substituted for “speciality” in paragraph (1.1).

Law reviews. — For article on 2006 amendment of this Code section, see 23 Georgia St. U.L. Rev. 209 (2006).

JUDICIAL DECISIONS

Definition of practice of nursing. — Administration of doctors' orders regarding medication is the province of registered nurses; in fact, O.C.G.A. § 43-26-3 (6) specifically includes within the definition of the practice of nursing "the administration of medication and treatments as prescribed by a physician practicing medicine". *Nowak v. High*, 209 Ga. App. 536, 433 S.E.2d 602 (1993).

Administration of medication. — Trial court properly dismissed a wrongful death claim by a deceased nursing home resident's children, alleging that the nursing home staff failed to administer properly the resident's medications, as such task involved the professional skill and judgment of a nurse, and nurses were licensed professionals with specialized knowledge pursuant to O.C.G.A.

§ 43-26-3(6) to which O.C.G.A. § 9-11-9.1 explicitly applied; as the children failed to comply with the expert affidavit requirement, dismissal of that aspect of the claim was proper. *Williams v. Alvista Healthcare Ctr., Inc.*, 283 Ga. App. 613, 642 S.E.2d 232 (2007).

Trial court erred in denying a hospital's motion to dismiss a medical malpractice complaint in a simple negligence action after the complainant failed to attach an expert witness affidavit pursuant to O.C.G.A. § 9-11-9.1, as a nurse's administration of medication to a patient, which was the subject matter of the suit, involved professional skill and judgment to comply with a standard within the professional's area of expertise. *Grady Gen. Hosp. v. King*, 288 Ga. App. 101, 653 S.E.2d 367 (2007).

43-26-4. Georgia Board of Nursing; membership; meetings; officers.

(a) The Georgia Board of Nursing existing immediately prior to April 4, 1990, is continued in existence and shall continue to consist of eight members to be appointed by the Governor with the confirmation of the Senate. Members shall serve three-year terms and until their successors are duly appointed and qualified. Those persons serving as members of the board immediately prior to April 4, 1990, shall continue to serve out their respective terms of office and until their respective successors are appointed and qualified. No member shall be appointed to more than two consecutive full terms, and for purposes of this limitation, an appointment to fill a vacancy for an unexpired term of two or more years shall constitute an appointment for a full term.

(b) A vacancy on the board for any reason other than expiration of the term shall be filled for the remainder of the unexpired term by appointment of the Governor with the confirmation of the Senate.

(c) Each of seven members appointed to the board shall be a registered professional nurse; shall have practiced nursing as a registered professional nurse for at least five years since graduation and immediately prior to appointment; shall be engaged in paid employment in clinical, educational, or administrative positions, or any combination thereof; shall be a citizen of the United States; and a resident of Georgia. The eighth member shall be a consumer member appointed by the Governor.

(d) No fewer than two members of the board shall hold master's or doctoral degrees or both. No fewer than two members of the board shall be currently employed in nursing service administration. No fewer than two members of the board shall be currently employed in professional nursing education. No two members of the board shall be employed by the same private school, school within the University System of Georgia, private employer, agency of state government, or another public employer. In the event a board member changes employment which causes a conflict with this subsection, the position of the member making such change shall be immediately vacant and a new member appointed to fill the vacancy.

(e) The board shall meet annually and shall elect from its members a president, vice president, and other officers as deemed necessary. All officers shall serve for terms of one year and until their successors have been elected. The board may hold such other meetings during the year as necessary to transact its business. (Code 1981, § 43-26-4, enacted by Ga. L. 1990, p. 747, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, "April 4, 1990," was substituted for "the effective date of this subsection" in two places in subsection (a).

43-26-5. General powers of board.

(a) The board shall:

(1) Be responsible for the enforcement of the provisions of this article and shall be specifically granted all of the necessary duties, powers, and authority to carry out this responsibility;

(2) Be authorized to draft, adopt, amend, repeal, and enforce such rules as it deems necessary for the administration and enforcement of this article in the protection of public health, safety, and welfare;

(3) Enforce qualifications for licensure;

(4) Develop and enforce reasonable and uniform standards for nursing education and nursing practice;

(5) Periodically evaluate nursing education programs and approve such programs as meet the board's requirements;

(6) Deny or withdraw approval from noncompliant nursing education programs;

(7) License duly qualified applicants by examination, endorsement, or reinstatement;

(8) Be authorized to issue temporary permits;

(9) Renew licenses of registered professional nurses and licensed undergraduate nurses in accordance with this article;

(10) Be authorized to set standards for competency of licensees continuing in or returning to practice;

(11) Set standards for and regulate advanced nursing practice;

(12) Be authorized to enact rules and regulations for registered professional nurses in their performing acts under a nurse protocol as authorized in Code Section 43-34-23 and enact rules and regulations for advanced practice registered nurses in performing acts as authorized in Code Section 43-34-25;

(13) Implement the disciplinary process;

(14) Be authorized to issue orders when a license is surrendered to the board while a complaint, investigation, or disciplinary action against such license is pending;

(15) Issue a limited license to practice nursing subject to such terms and conditions as the board may impose;

(16) Provide consultation and conduct conferences, forums, studies, and research on nursing education and nursing practice;

(17) Approve the selection of a qualified person to serve as executive director;

(18) Be authorized to appoint standing or ad hoc committees as necessary to inform and make recommendations to the board about issues and concerns and to facilitate communication amongst the board, licensees, and the community;

(19) Maintain membership in the national organization which develops and regulates the nursing licensing examination;

(20) Be authorized to collect data regarding existing nursing resources in Georgia and coordinate planning for nursing education and nursing practice;

(21) Determine fees; and

(22) Adopt a seal which shall be in the care of the executive director and shall be affixed only in such a manner as prescribed by the board.

(b) The board shall be the sole professional licensing board for determining if a registered professional nurse or any other person has engaged illegally in the practice of nursing. If a registered professional nurse is charged with the unauthorized practice of any other health profession by any other board, such board shall notify the Georgia

Board of Nursing before conducting any hearing. Nothing contained in this article shall be construed to limit any powers of any other board.

(c) Chapter 1 of this title is expressly adopted and incorporated by reference into this article as if all the provisions of such chapter were included in this article. (Code 1981, § 43-26-5, enacted by Ga. L. 1990, p. 747, § 1; Ga. L. 2000, p. 1706, § 13; Ga. L. 2006, p. 125, § 4/SB 480; Ga. L. 2009, p. 859, § 12/HB 509.)

The 2009 amendment, effective July 1, 2009, in paragraph (a)(12), substituted “Code Section 43-34-23” for “Code Section 43-34-26.1” in the middle and substituted “Code Section 43-34-25” for “Code Section 43-34-26.3” at the end.

Administrative rules and regula-

tions. — Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Board of Nursing, Chapter 410-1 et seq.

Law reviews. — For article on 2006 amendment of this Code section, see 23 Georgia St. U.L. Rev. 209 (2006).

RESEARCH REFERENCES

ALR. — Disqualification, for bias or interest, of member of occupation or profession sitting in license revocation proceeding, 97 ALR2d 1210.

Professional incompetency as ground

for disciplinary measure against physician or dentist, 28 ALR3d 487.

Revocation of nurse’s license to practice profession, 55 ALR3d 1141.

43-26-6. Use of certain titles and abbreviations by licensed nurses.

(a) Any person who is licensed as a registered professional nurse shall have the right to use the title “registered professional nurse” and the abbreviation “R.N.” Any person recognized by the board as an advanced practice registered nurse shall have the right to use the title “advanced practice registered nurse” and the abbreviation “A.P.R.N.” No other person shall assume such titles or use such abbreviations or any other words, letters, signs, or symbols to indicate that such person is a registered professional nurse or an advanced practice registered nurse in Georgia. Nothing in this subsection shall be construed to repeal the right of any person who is licensed as a registered professional nurse or recognized by the board as an advanced practice registered nurse on June 30, 2006, to be licensed and to use the title “registered professional nurse” or to use the title “advanced practice registered nurse,” respectively.

(b) Any person holding a license to practice nursing as a licensed undergraduate nurse, which license was issued by the board and valid on July 1, 1975, shall be deemed to be licensed to practice nursing as a licensed undergraduate nurse under this article and shall have the right to use the title “licensed undergraduate nurse” and the abbreviation “L.U.N.” No other person shall assume such title or use such abbreviation or any other words, letters, signs, or symbols to indicate

that such person is licensed to practice nursing as a licensed undergraduate nurse. After July 1, 1975, there shall be no new certificates issued for licensure to practice nursing as a licensed undergraduate nurse.

(c) Any person who is licensed as a registered professional nurse shall identify that he or she is so licensed by displaying either the title “registered professional nurse” or “registered nurse,” the abbreviation “R.N.,” the title “advanced practice registered nurse,” or the abbreviation “A.P.R.N.” on a name tag or other similar form of identification during times when such person is providing direct patient care. An advanced practice registered nurse shall meet the identification requirements of this subsection by displaying the title or abbreviation of his or her area of specialization.

(d) No person shall use the title “nurse” or any other title or abbreviation that would represent to the public that a person is authorized to practice nursing unless the person is licensed or otherwise authorized under this article or Article 2 of this chapter. (Code 1981, § 43-26-6, enacted by Ga. L. 1990, p. 747, § 1; Ga. L. 1997, p. 979, § 1; Ga. L. 2006, p. 125, § 5/SB 480; Ga. L. 2007, p. 460, § 2/SB 222; Ga. L. 2008, p. 378, § 1/HB 1041; Ga. L. 2011, p. 779, § 1A/SB 100.)

The 2011 amendment, effective May 13, 2011, added subsection (d). amendment of this Code section, see 23 Georgia St. U.L. Rev. 209 (2006).

Law reviews. — For article on 2006

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Health-Care Providers, § 7. §§ 1 et seq., 165 et seq.

C.J.S. — 70 C.J.S., Physicians, Sur-

43-26-7. Requirements for licensure as registered professional nurse; requirements for nontraditional nursing education program.

(a) Any applicant who meets the requirements of this Code section shall be eligible for licensure as a registered professional nurse.

(b) An applicant for licensure by examination shall:

(1) Submit a completed written application and fee;

(2)(A) Have graduated from an approved nursing education program, as defined in Code Section 43-26-3; or

(B)(i) Notwithstanding subparagraph (A) of this paragraph, have graduated from a nontraditional nursing education program approved by the board which meets the requirements in subsection (e) of this Code section; and

(ii)(I) If the applicant entered the nontraditional nursing education program as a licensed practical nurse and had an academic education as a licensed practical nurse that included clinical training in pediatrics, obstetrics and gynecology, medical-surgical, and mental illness, have at least two years of clinical experience in the five years preceding the date of the application in an acute care inpatient facility or a long-term acute care facility as a licensed practical nurse, as approved by the board. Such clinical experience shall be documented in writing by the applicant's immediate supervisor stating that, in his or her opinion, the applicant has exhibited the critical thinking abilities, clinical skills, and leadership abilities that would indicate the ability to work as a beginning registered professional nurse;

(II) If the applicant entered the nontraditional nursing education program as a licensed practical nurse, had an academic education as a licensed practical nurse that included clinical training in pediatrics, obstetrics and gynecology, medical-surgical, and mental illness, and has at least two years of experience as a licensed practical nurse in any setting, although such experience shall be exclusive of night duty in a skilled nursing facility, but less than two years of experience in the five years preceding the date of the application in an acute care inpatient facility or a long-term acute care facility, as approved by the board, have completed a 320 hour postgraduate preceptorship. If the applicant can show that he or she cannot find a preceptorship in an acute care inpatient facility or a long-term acute care facility, the board may authorize a preceptorship pursuant to this subdivision in a skilled nursing facility, if such facility has 100 beds or more and such facility ensures to the board that the applicant will be providing health care to patients with similar health care needs as those patients in a long-term acute care facility;

(III) If the applicant entered the nontraditional nursing education program as (1) a paramedic with at least two years of experience as a paramedic or (2) a licensed practical nurse with less than two years of clinical experience in the five years preceding the date of the application in an acute care inpatient facility or a long-term acute care facility as a licensed practical nurse whose academic training as a licensed practical nurse did not include clinical training in pediatrics, obstetrics and gynecology, medical-surgical, and mental illness, have completed a 480 hour postgraduate preceptorship. Such preceptorship shall be in the area or areas as determined by the board on a case-by-case basis, which may include pediat-

rics, obstetrics and gynecology, medical-surgical, mental illness, and transition into the role of a registered professional nurse;

(IV) If the applicant entered the nontraditional nursing education program as a military medical corpsman and has at least two years of experience as a military medical corpsman, have completed a postgraduate preceptorship of at least 480 hours but not more than 640 hours, as determined by the board; or

(V) If the applicant does not meet the requirements of subdivision (I), (II), (III), or (IV) of this division and the applicant entered a nontraditional nursing education program before July 1, 2008, which meets the requirements of subsection (e) of this Code section and completes such program no later than June 30, 2015, have completed a 640 hour postgraduate preceptorship arranged by the applicant under the supervision of a registered professional nurse. The preceptorship shall have prior approval of the board, and successful completion of the preceptorship shall be verified in writing by the preceptor. The preceptorship shall be in an acute care inpatient facility or a long-term acute care facility; provided, however, that the board may authorize a preceptorship pursuant to this subdivision in other facilities to obtain specialized experience in certain areas.

All preceptorships required pursuant to this division shall be arranged by the applicant under the close supervision of a registered professional nurse where such applicant is transitioned into the role of a registered professional nurse and the applicant performs duties typically performed by registered professional nurses. Except as otherwise provided in subdivision (II) of this division, a preceptorship shall be in an acute care inpatient facility or a long-term acute care facility; provided, however, that the board may authorize a preceptorship in other facilities to obtain specialized experience in certain areas. The preceptorship shall have prior approval of the board, and successful completion of the preceptorship shall be documented in writing by the preceptor stating that, in his or her opinion, the applicant has exhibited the critical thinking abilities, clinical skills, and leadership abilities necessary to practice as a beginning registered professional nurse. No later than August 1, 2011, the board shall develop and make available one or more standard forms for use by and assistance to applicants in securing and completing preceptorships. Such form or forms shall include information relating to the specific requirements for

preceptorships, including the minimum qualifications of the preceptor, the type of training required, and the documentation required upon completion of the preceptorship. The board shall make the determinations required by this division in accordance with its established guidelines;

(3) Pass a board recognized licensing examination; provided, however, that such examination may not be taken prior to graduation from the approved nursing education program. In no way shall the passage of such examination by a graduate of a nontraditional nursing education program who does not meet the other requirements of this subsection be construed to authorize such individual to practice nursing, to require the board to license such individual as a registered professional nurse other than to issue in its sole discretion a temporary permit pursuant to Code Section 43-26-8, or to be endorsed from another state as a registered professional nurse;

(4) Have satisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation, as determined by the board. Application for a license under this Code section shall constitute express consent and authorization for the board or its representative to perform a criminal background check. Each applicant who submits an application to the board for licensure by examination agrees to provide the board with any and all information necessary to run a criminal background check, including, but not limited to, classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of such background check; and

(5) Meet such other criteria as established by the board.

(c) An applicant for licensure by endorsement shall:

(1) Submit a completed written application and fee;

(2)(A) Have passed a board recognized licensing examination following graduation from an approved nursing education program, as defined in Code Section 43-26-3; or

(B) Notwithstanding subparagraph (A) of this paragraph, have graduated from a nontraditional nursing education program approved by the board which meets the requirements in subsection (e) of this Code section;

(3) Submit verification of initial and current licensure in any other licensing jurisdiction administering a board recognized licensing examination;

(4)(A) Have practiced nursing as a registered professional nurse for a period of time as determined by the board or have graduated

from a nursing education program within the four years immediately preceding the date of the application;

(B) If the applicant entered a nontraditional nursing education program as a licensed practical nurse whose academic education as a licensed practical nurse included clinical training in pediatrics, obstetrics and gynecology, medical-surgical, and mental illness, have practiced nursing as a registered professional nurse in a health care facility for at least one year in the three years preceding the date of the application, and such practice is documented by the applicant and approved by the board; provided, however, that for an applicant that does not meet the experience requirement of this subparagraph, the board shall require the applicant to complete a 320 hour postgraduate preceptorship arranged by the applicant under the oversight of a registered nurse where such applicant is transitioned into the role of a registered professional nurse. The preceptorship shall have prior approval of the board, and successful completion of the preceptorship shall be verified in writing by the preceptor; or

(C) If the applicant entered a nontraditional nursing education program as anything other than a licensed practical nurse whose academic education as a licensed practical nurse included clinical training in pediatrics, obstetrics and gynecology, medical-surgical, and mental illness, have graduated from such program and practiced nursing as a registered professional nurse in a health care facility for at least two years in the five years preceding the date of the application, and such practice is documented by the applicant and approved by the board; provided, however, that for an applicant that does not meet the experience requirement of this subparagraph, the board shall require the applicant to complete a postgraduate preceptorship of at least 480 hours but not more than 640 hours, as determined by the board, arranged by the applicant under the oversight of a registered professional nurse where such applicant is transitioned into the role of a registered professional nurse. The preceptorship shall have prior approval of the board, and successful completion of the preceptorship shall be verified in writing by the preceptor.

For purposes of this paragraph, the term "health care facility" means an acute care inpatient facility, a long-term acute care facility, an ambulatory surgical center or obstetrical facility as defined in Code Section 31-6-2, and a skilled nursing facility, so long as such skilled nursing facility has 100 beds or more and provides health care to patients with similar health care needs as those patients in a long-term acute care facility;

(5) Have satisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal

Bureau of Investigation, as determined by the board. Application for a license under this Code section shall constitute express consent and authorization for the board or its representative to perform a criminal background check. Each applicant who submits an application to the board for licensure by examination agrees to provide the board with any and all information necessary to run a criminal background check, including, but not limited to, classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of such background check; and

(6) Meet such other criteria as established by the board.

(d) An applicant for reinstatement who has previously held a valid license in Georgia shall:

(1) Submit a completed written application and fee;

(2) Have practiced nursing as a registered professional nurse for a period of time as determined by the board or have graduated from an approved nursing education program, as defined in Code Section 43-26-3, within the four years immediately preceding the date of the application;

(3) Have satisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation, as determined by the board. Application for a license under this Code section shall constitute express consent and authorization for the board or its representative to perform a criminal background check. Each applicant who submits an application to the board for licensure by examination agrees to provide the board with any and all information necessary to run a criminal background check, including, but not limited to, classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of such background check; and

(4) Meet such other criteria as established by the board.

(e) A nontraditional nursing education program shall meet the following requirements:

(1) Is part of an institution of higher education that is approved by the appropriate regulatory authorities of its home state;

(2) Holds regional and specialty accreditation by an accrediting body or bodies recognized by the United States Secretary of Education or the Council for Higher Education Accreditation;

(3) Requires its students to pass faculty determined program outcomes, including competency based assessments of nursing knowledge and a summative performance assessment of clinical competency of a minimum of 2 1/2 days developed by faculty subject

matter experts that follows nationally recognized standards for educational testing; and

(4) Its graduates pass a board recognized licensing examination at a rate equivalent to the minimum rate required for board approved traditional nursing education programs. (Code 1981, § 43-26-7, enacted by Ga. L. 1990, p. 747, § 1; Ga. L. 1994, p. 97, § 43; Ga. L. 2008, p. 378, § 2/HB 1041; Ga. L. 2009, p. 210, § 2/HB 475; Ga. L. 2011, p. 752, § 43/HB 142; Ga. L. 2011, p. 779, § 1C/SB 100.)

The 2009 amendment, effective April 29, 2009, rewrote paragraph (b)(2); in paragraph (b)(3), in the first sentence, inserted “approved” and added the period at the end and added the second sentence; rewrote subsection (c); in paragraph (d)(2), substituted “an approved nursing education program, as defined in Code Section 43-26-3,” for “a nursing education program approved by the board or which meets criteria similar to, and not less stringent than, those established by the board” near the end; and added subsection (e).

The 2011 amendments. — The first 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted “If the applicant entered” for “If entered” at the beginning of subdivisions (b)(2)(B)(ii)(I) and (b)(2)(B)(ii)(II) and subparagraphs (c)(4)(C) and (c)(4)(D); and substituted “If the applicant graduated” for “If graduated” at the beginning of subparagraph (c)(4)(B). The second 2011 amendment, effective May 13,

2011, rewrote division (b)(2)(B)(ii) and paragraph (c)(4); deleted former paragraph (e)(3), which read: “Requires its program applicants to be a licensed practical/vocational nurse, military medical corpsman, or paramedic;” and redesignated former paragraphs (e)(4) and (e)(5) as present paragraphs (e)(3) and (e)(4), respectively; and inserted a comma in paragraph (e)(3). See the editor’s note regarding the effect of these amendments.

Editor’s notes. — Ga. L. 2011, p. 752, § 54(e), not codified by the General Assembly, provides: “In the event of an irreconcilable conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2011 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict.” Accordingly, the amendments to subparagraphs (c)(4)(B) and (c)(4)(D) by Ga. L. 2011, p. 752, § 43, were not given effect.

JUDICIAL DECISIONS

Editor’s notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 84-1008 are included in the annotations for this Code section.

Board may not license nurses without examination. — Georgia Board of

Nursing is without statutory authority to issue permanent nursing licenses to any nurse unless that nurse has passed the Georgia nursing examination. *Skrine v. Kim*, 242 Ga. 185, 249 S.E.2d 534 (1978) (decided under former Code 1933, § 84-1008).

OPINIONS OF THE ATTORNEY GENERAL

Editor’s notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 84-1008 are included in the annotations for this Code section.

Admission by comity. — Applicant may be licensed to practice nursing as a registered professional nurse in Georgia by endorsement, without examination, if the nurse is licensed to practice in another

state or territory of the United States and if, at the time the nurse was licensed within that particular state, the nurse met the statutory qualifications for

licensure as presently written. 1978 Op. Att'y Gen. No. 78-10 (decided under former Code 1933, § 84-1008).

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 26 et seq.

C.J.S. — 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers, §§ 1 et seq., 12.

ALR. — Right to enjoin business com-

petitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

43-26-8. Temporary permits.

(a) A temporary permit may be issued to an applicant for licensure by examination, endorsement, or reinstatement in accordance with criteria established by the board.

(b) A six-month temporary permit may be issued to a graduate of a nontraditional nursing education program that meets the requirements of subsection (e) of Code Section 43-26-7 to practice nursing only as a part of his or her board approved preceptorship. A temporary permit issued pursuant to this subsection may be renewed only one time for an additional six-month period. (Code 1981, § 43-26-8, enacted by Ga. L. 1990, p. 747, § 1; Ga. L. 2009, p. 210, § 3/HB 475; Ga. L. 2010, p. 878, § 43/HB 1387.)

The 2009 amendment, effective April 29, 2009, designated the existing provisions as subsection (a) and added subsection (b).

The 2010 amendment, effective June

3, 2010, part of an Act to revise, modernize, and correct the Code, substituted "his or her" for "their" in the first sentence of subsection (b).

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 133.

C.J.S. — 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers, § 32.

43-26-9. Biennial renewal of licenses; voluntary surrender or failure to renew license; restoration and reissuance of license.

(a) Licenses issued under this article shall be renewed biennially according to schedules and fees approved by the board.

(b) A renewed license shall be issued to a registered professional nurse or licensed undergraduate nurse who remits the required fee and complies with requirements established by the board.

(c) The voluntary surrender of a license or the failure to renew a license by the end of an established penalty period shall have the same effect as a revocation of said license, subject to reinstatement at the discretion of the board. The board may restore and reissue a license and, as a condition thereof, may impose any disciplinary sanction provided by Code Section 43-26-11 or Code Section 43-1-19. (Code 1981, § 43-26-9, enacted by Ga. L. 1990, p. 747, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 133.

C.J.S. — 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers, § 32.

ALR. — Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

43-26-10. Practicing as a registered professional nurse without a license prohibited.

It shall be a misdemeanor for any person, including any corporation, association, or individual, to:

(1) Practice nursing as a registered professional nurse, without a valid, current license, except as otherwise permitted under Code Section 43-26-12;

(2) Practice nursing as a registered professional nurse under cover of any diploma, license, or record illegally or fraudulently obtained, signed, or issued;

(3) Practice nursing as a registered professional nurse during the time the license is suspended, revoked, surrendered, or administratively revoked for failure to renew;

(4) Use any words, abbreviations, figures, letters, title, sign, card, or device implying that such person is a registered professional nurse or advanced practice registered nurse unless such person is duly licensed or recognized by the board so to practice under the provisions of this article;

(5) Fraudulently furnish a license to practice nursing as a registered professional nurse;

(6) Knowingly employ any person to practice nursing as a registered professional nurse who is not a registered professional nurse;

(7) Conduct a nursing education program preparing persons to practice nursing as registered professional nurses unless the program has been approved by the board; or

(8) Knowingly aid or abet any person to violate this article. (Code 1981, § 43-26-10, enacted by Ga. L. 1990, p. 747, § 1; Ga. L. 1994, p. 97, § 43; Ga. L. 2006, p. 125, § 6/SB 480.)

Law reviews. — For article on 2006 amendment of this Code section, see 23 Georgia St. U.L. Rev. 209 (2006).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 84-9915, as it read prior to revision of this chapter by Ga. L. 1975, p. 501, are included in the annotations for this Code section.

Nursing permitted without certificate if no representation of registered status made. — While certificate of Board of Examiners of Nurses (now Georgia Board of Nursing) is necessary to practice professional nursing as a graduate or registered nurse, any person may engage in nursing if no such representation is made. 1948-49 Op. Att'y Gen. p. 324 (decided under former Code 1933, § 84-9915).

Wearing "RDN" badge and representing self as registered or licensed nurse violates section. — Wearing of badge "RDN," which is supposed to stand

for "Registered Doctor's Nurse," alone and of itself does not violate the law; it would be a violation of law to wear such insignia for purpose of representing that the wearer thereof is a licensed undergraduate nurse, or a graduate or registered nurse. 1958-59 Op. Att'y Gen. p. 268 (decided under former Code 1933, § 84-9915).

Jury question. — It is for the jury to decide whether the wearer of insignia "RDN" violates the law; in order to sustain a conviction, however, it is necessary to prove that the wearer of such insignia did so for purpose of deceiving the public into believing that the wearer was a licensed undergraduate nurse, or a graduate registered nurse. 1958-59 Op. Att'y Gen. p. 268 (decided under former Code 1933, § 84-9915).

RESEARCH REFERENCES

ALR. — Practicing medicine, surgery, dentistry, optometry, podiatry, or other healing arts without license as a separate or continuing offense, 99 ALR2d 654.

43-26-11. Denial or revocation of licenses; other discipline.

In addition to the authority granted in Code Section 43-1-19, the board shall have the authority to refuse to grant a license to an applicant, to revoke the license of a licensee, or to discipline a licensee upon a finding by the board that the applicant or licensee has:

(1) Been convicted of any felony, crime involving moral turpitude, or crime violating a federal or state law relating to controlled substances or dangerous drugs in the courts of this state, any other state, territory, or country, or in the courts of the United States,

including but not limited to a plea of nolo contendere entered to the charge; or

(2)(A) Displayed an inability to practice nursing as a registered professional nurse or licensed undergraduate nurse with reasonable skill and safety due to illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition.

(B) In enforcement of this paragraph, the board may, upon reasonable grounds, require a licensee or applicant to submit to a mental or physical examination by a board approved health care professional. The results of such examination shall be admissible in any hearing before the board, notwithstanding any claim of privilege under a contrary law or rule. Every person who is licensed to practice nursing as a registered professional nurse or licensed undergraduate nurse in this state or who shall file an application shall be deemed to have given such person's consent to submit to such mental or physical examination and to have waived all objections to the admissibility of the results in any hearing before the board upon the grounds that the same constitutes a privileged communication. If a licensee or applicant fails to submit to such an examination when properly directed to do so by the board, unless such failure was due to circumstances beyond that person's control, the board may enter a final order upon proper notice, hearing, and proof of such refusal. Any licensee or applicant who is prohibited from practicing under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate to the board that such person can resume or begin to practice with reasonable skill and safety nursing as a registered professional nurse or licensed undergraduate nurse.

(C) In enforcement of this paragraph the board may, upon reasonable grounds, obtain any and all records relating to the mental or physical condition of a licensee or applicant, including psychiatric records; and such records shall be admissible in any hearing before the board, notwithstanding any privilege under a contrary rule of law or statute. Every person who is licensed as a registered professional nurse or licensed undergraduate nurse in this state or who shall file an application shall be deemed to have given such person's consent to the board's obtaining any such records and to have waived all objections to the admissibility of such records in any hearing before the board upon the grounds that the same constitute a privileged communication. (Code 1981, § 43-26-11, enacted by Ga. L. 1990, p. 747, § 1; Ga. L. 2002, p. 415, § 43.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, “board approved” was substituted for

“board-approved” in the first sentence of subparagraph (2)(A) (now subparagraph (2)(B)).

43-26-11.1. Administration of anesthesia by certified registered nurse anesthetist.

In any case where it is lawful for a duly licensed physician practicing medicine under the laws of this state to administer anesthesia, such anesthesia may be administered by a certified registered nurse anesthetist, provided that such anesthesia is administered under the direction and responsibility of a duly licensed physician. (Code 1981, § 43-26-11.1, enacted by Ga. L. 1990, p. 747, § 1; Ga. L. 1994, p. 97, § 43.)

Cross references. — Use of general anesthesia by dentists, § 43-11-21.

JUDICIAL DECISIONS

Editor’s notes. — In light of the similarity of the statutory provisions, decisions under former Code Section 43-26-9 have been included in the annotations for this Code Section.

Student cannot lawfully administer anesthesia under supervision of a physician’s assistant. *Central Anesthesia Assocs. v. Worthy*, 254 Ga. 728, 333 S.E.2d 829 (1985) (decided under former O.C.G.A. § 43-26-9).

Violation of O.C.G.A. § 43-26-11.1 may constitute negligence per se. — Although former subsection (b) of former O.C.G.A. § 43-26-9 did not establish a standard of conduct as to what anesthesia plan shall be used under which conditions, the statute nevertheless established a standard of conduct constituting ordinary care, the breach of which may have constituted negligence per se. *Central Anesthesia Assocs. v. Worthy*, 254 Ga. 728, 333 S.E.2d 829 (1985) (decided under former O.C.G.A. § 43-26-9).

Violation of O.C.G.A. § 43-26-11.1 negligence per se. — If, had former O.C.G.A. § 43-26-9 been followed, and had the anesthesia been administered by a certified registered nurse anesthetist (CRNA) under an anesthesia-qualified physician’s supervision, it is possible that no injury or at least lesser injury would

have resulted to the patient, and if the unauthorized and unsupervised administration of anesthesia could have caused injury to the patient, the violation of that section constituted negligence per se. *Central Anesthesia Assocs. P.C. v. Worthy*, 173 Ga. App. 150, 325 S.E.2d 819 (1984), aff’d, 254 Ga. 728, 333 S.E.2d 829 (1985) (decided under former O.C.G.A. § 43-26-9).

Purpose of former O.C.G.A. § 43-26-9 is to protect patients from the dangers of improperly administered anesthesia by those unqualified by a lack of what public policy regards as minimum education in the field, and by a lack of specified supervision. The statute sets threshold qualifications which have to be met before a person is permitted under the law to apply anesthesia. These qualifications do not establish how the anesthesia is to be administered, or what methods or instruments may be used, but rather who may do it with whose supervision. Thus it prohibits anyone not meeting these qualifications from performing, and it further prohibits even a statutorily qualified person from performing without prescribed supervision. The “direction” referred to in the statute equates with “supervision.” *Doctors Hosp. v. Bonner*, 195 Ga. App. 152, 392 S.E.2d 897 (1990) (decided under former O.C.G.A. § 43-26-9).

RESEARCH REFERENCES

ALR. — Nurse's liability for her own negligence or malpractice, 51 ALR2d 970.

43-26-12. Exceptions to operation of article; burden of proof.

(a) No provision in this article shall be construed to require licensure in Georgia as a registered professional nurse in:

(1) The practice of nursing by students that is an integral part of a curriculum in a board approved nursing education program leading to initial licensure;

(2) The rendering of assistance by anyone in the case of an emergency or disaster;

(3) The incidental care of the sick by members of the family, friends, or persons primarily utilized as housekeepers, provided that such care does not constitute the practice of nursing within the meaning of this article;

(4) Caring for the sick in accordance with tenets or practices of any church or religious denomination which teaches reliance upon spiritual means through prayer for healing;

(5) The performance of auxiliary services in the care of patients when such care and activities do not require the knowledge and skill required of a person practicing nursing as a registered professional nurse and when such care and activities are performed under orders or directions of a licensed physician, licensed dentist, licensed podiatrist, or person licensed to practice nursing as a registered professional nurse;

(6) The practice of nursing as a registered professional nurse, by a person licensed so to practice in another state, who is employed by the United States government or any bureau, division, or agency thereof while in the discharge of that person's official duties;

(7) The practice of nursing as a registered professional nurse, by a person currently licensed so to practice in another state, who is employed by an individual, agency, or corporation located in another state and whose employment responsibilities include transporting patients into, out of, or through this state for a period not to exceed 24 hours;

(8) The practice of nursing as a registered professional nurse by a person currently licensed so to practice in another state, who is visiting Georgia as a nonresident, in order to provide specific, nonclinical, short-term, time limited services including, but not

limited to, consultation, accreditation site visits, and the participation in continuing education programs; and

(9)(A) The performance of health maintenance activities by a proxy caregiver pursuant to a written plan of care for a disabled individual when:

(i) Such individual or a person legally authorized to act on behalf of such individual has executed a written informed consent designating a proxy caregiver and delegating responsibility to such proxy caregiver to receive training and to provide health maintenance activities to such disabled individual pursuant to the written orders of an attending physician, or an advanced practice registered nurse or physician assistant working under a nurse protocol agreement or job description, respectively, pursuant to Code Section 43-34-25 or 43-34-23;

(ii) Such health maintenance activities are provided outside of a hospital or nursing home and are not provided by a medicare-certified home health agency or hospice organization and if alternative sources are available, Medicaid is the payor of last resort; and

(iii) The written plan of care implements the written orders of the attending physician, advanced practice registered nurse, or physician assistant and specifies the frequency of training and evaluation requirements for the proxy caregiver, including additional training when changes in the written plan of care necessitate added duties for which such proxy caregiver has not previously been trained. A written plan of care may be established by a registered professional nurse.

Rules, regulations, and policies regarding training for proxy caregivers pursuant to this paragraph shall be promulgated by the Department of Behavioral Health and Developmental Disabilities or the Department of Community Health, as applicable.

(B) An attending physician, advanced practice registered nurse, or physician assistant whose orders or written plan of care provide for the provision of health maintenance activities to a disabled person shall not be vicariously liable for a proxy caregiver's negligent performance of health maintenance activities unless the proxy caregiver is an employee of the physician, advanced practice registered nurse, or physician assistant. Any person who trains a proxy caregiver to perform health maintenance activities for a disabled individual may be held liable for negligently training that proxy caregiver if such training deviated from the applicable standard of care and was a proximate cause of injury to the disabled individual.

(C) For purposes of this paragraph, the term:

(i) “Disabled individual” means an individual who has a physical or mental impairment that substantially limits one or more major life activities and who meets the criteria for a disability under state or federal law.

(ii) “Health maintenance activities” are limited to those activities that, but for a disability, a person could reasonably be expected to do for himself or herself. Such activities are typically taught by a registered professional nurse, but may be taught by an attending physician, advanced practice registered nurse, physician assistant, or directly to a patient and are part of ongoing care. Health maintenance activities are those activities that do not include complex care such as administration of intravenous medications, central line maintenance, and complex wound care; do not require complex observations or critical decisions; can be safely performed and have reasonably precise, unchanging directions; and have outcomes or results that are reasonably predictable. Health maintenance activities conducted pursuant to this paragraph shall not be considered the practice of nursing.

(iii) “Proxy caregiver” means an unlicensed person who has been selected by a disabled individual or a person legally authorized to act on behalf of such individual to serve as such individual’s proxy caregiver, provided that such person shall receive training and shall demonstrate the necessary knowledge and skills to perform documented health maintenance activities, including identified specialized procedures, for such individual.

(iv) “Training” means teaching proxy caregivers the necessary knowledge and skills to perform health maintenance activities for disabled individuals. Good faith efforts by an attending physician, advanced practice registered nurse, physician assistant, or registered professional nurse to provide training to a proxy caregiver to perform health maintenance activities shall not be construed to be professional delegation.

(b) In a civil or administrative proceeding under this chapter, a person claiming an exemption or an exception pursuant to subsection (a) of this Code section has the burden of proving this exemption or exception. In a criminal proceeding, the burden of going forward with evidence of a claim of exemption or exception pursuant to subsection (a) of this Code section is on the person claiming the exemption or exception. (Code 1981, § 43-26-12, enacted by Ga. L. 1990, p. 747, § 1; Ga. L. 1994, p. 97, § 43; Ga. L. 2010, p. 1153, § 1/HB 1040; Ga. L. 2011, p. 752, § 43/HB 142.)

The 2010 amendment, effective July 1, 2010, deleted “and” at the end of paragraph (a)(7), substituted “; and” for a period at the end of paragraph (a)(8), and added paragraph (a)(9).

The 2011 amendment, effective May 13, 2011, substituted “individual who has”

for “individual that has” near the beginning of division (a)(9)(C)(i).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, “include” was substituted for “including” following “responsibilities” in paragraph (a)(7).

43-26-13. Certain information given to the board by licensees.

A licensee may, in lieu of providing his or her home address, provide the board a legitimate business address for purposes of the public information made available by the board with regard to licensed registered professional nurses. (Code 1981, § 42-26-13, as enacted by Ga. L. 2006, p. 125, § 7/SB 480.)

Editor’s notes. — The former Code section, concerning termination, was based on Ga. L. 1990, p. 747, § 1 and was repealed by Ga. L. 1992, p. 3137, § 20, effective July 1, 1992.

Law reviews. — For article on 2006 enactment of this Code section, see 23 Georgia St. U.L. Rev. 209 (2006).

ARTICLE 2

LICENSED PRACTICAL NURSES

Editor’s notes. — Ga. L. 1992, p. 2151, § 1, effective July 1, 1992, repealed the Code sections formerly codified at this article and enacted the current article. The former article consisted of Code Sections 43-26-30 through 43-26-39 and was based on Ga. L. 1953, Jan.-Feb. Sess., p. 333, §§ 2, 3, 5, 6, 7, 8, 9, 11, 12; Ga. L. 1956, p. 691, § 6; Ga. L. 1965, p. 455, § 1; Ga. L. 1967, p. 593, §§ 1, 2; Ga. L. 1974, p. 494, §§ 1, 2; Ga. L. 1977, p. 1200, §§ 2, 3, 4, 6, 7; Ga. L. 1980, p. 58, § 1; Ga. L. 1981, p. 1815, §§ 1, 2, 4, 5, 6, 7, 9, 12; Ga. L. 1981, Ex. Sess., p. 8; Ga. L. 1982, p. 2222,

§§ 1, 2; Ga. L. 1983, p. 3, § 32; Ga. L. 1983, p. 465, §§ 1, 2; Ga. L. 1988, p. 530, § 5; Ga. L. 1990, p. 891, § 1. Former Code Section 43-26-36 was amended by Ga. L. 1992, p. 6, § 43. Former Code Section 43-26-39 was also repealed by Ga. L. 1992, p. 3137, § 21.

Administrative rules and regulations. — Organization, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Examiners of Licensed Practical Nurses, Chapter 400-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 39 Am. Jur. 2d, Health, §§ 1 et seq., 26 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et

seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional

Law, §§ 2085, 2086. 39A C.J.S., Health and Environment, §§ 3 et seq., 37 et seq., 48 et seq. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administra-

tive Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

43-26-30. Short title.

This article shall be known and may be cited as the "Georgia Practical Nurses Practice Act." (Code 1981, § 43-26-30, enacted by Ga. L. 1992, p. 2151, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Nurses may not write or telephone in prescriptions by referring to writ-

ten protocol. 1988 Op. Att'y Gen. No. 88-9.

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons and Other Healers, § 7 et seq.

geons, and Other Health-Care Providers, § 1 et seq.

C.J.S. — 70 C.J.S., Physicians, Sur-

ALR. — Nurse's liability for her own negligence or malpractice, 51 ALR2d 970.

43-26-31. Purpose of article.

The purpose of this article is to protect, promote, and preserve the public health, safety, and welfare through regulation and control of practical nursing education and practice. This article ensures that any person practicing or offering to practice practical nursing or using the title "Licensed Practical Nurse," as defined in this article, within the State of Georgia, shall be licensed as provided in this article. (Code 1981, § 43-26-31, enacted by Ga. L. 1992, p. 2151, § 1.)

Administrative rules and regulations. — Rules of the profession, Official Compilation of the Rules and Regulations

of the State of Georgia, Rules of Georgia Board of Examiners of Licensed Practical Nurses, Chapter 400-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1953, Jan.-Feb. Sess., p. 373, § 11 are included in annotations for this Code section.

Board of Examiners cannot change statutory provisions as to qualifications of licensed practical nurses. 1970 Op. Att'y Gen. No. U70-15 (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 333, § 11).

43-26-32. Definitions.

As used in this article, the term:

(1) “Active practice as a licensed practical nurse” means to practice practical nursing as a licensed practical nurse by performing for compensation acts authorized by the board.

(1.1) “Approved nursing education program” located in this state means a nursing education program approved by the board as meeting criteria established by the board. An “approved nursing education program” located outside this state means a nursing education program that the board has determined to meet criteria similar to and not less stringent than criteria established by the board. In order to be approved by the board, a nursing education program must be one that is offered by:

(A) A unit of the University System of Georgia accredited by the Commission on Colleges of the Southern Association of Colleges and Schools;

(B) An institution of the Technical College System of Georgia;

(C) A nonprofit postsecondary institution of higher education that is accredited by a regional accrediting agency recognized by the United States Department of Education; or

(D) A proprietary institution of higher education that is accredited by a regional accrediting agency recognized by the United States Department of Education.

(2) “Board” means the Georgia Board of Examiners of Licensed Practical Nurses created in Code Section 43-26-34.

(3) “Consumer member” means a United States citizen and Georgia resident who is knowledgeable about consumer health concerns, does not derive that person’s primary livelihood from the practice of nursing, and shall neither be nor ever have been a health care provider or enrolled in any health related educational program.

(4) “License” means a current document, issued by the board, permitting a person to practice practical nursing as a licensed practical nurse.

(5) “Licensed practical nurse” means a person who has completed a board approved nursing program necessary to qualify for examination for licensure and who is authorized by a license issued under this article to practice practical nursing.

(6) “Licensure” means the bestowing of a current license by the board permitting a person to practice practical nursing as a licensed practical nurse.

(7) “The practice of licensed practical nursing” means the provision of care for compensation, under the supervision of a physician

practicing medicine, a dentist practicing dentistry, a podiatrist practicing podiatry, or a registered nurse practicing nursing in accordance with applicable provisions of law. Such care shall relate to the maintenance of health and prevention of illness through acts authorized by the board, which shall include, but not be limited to, the following:

(A) Participating in the assessment, planning, implementation, and evaluation of the delivery of health care services and other specialized tasks when appropriately trained and consistent with board rules and regulations;

(B) Providing direct personal patient observation, care, and assistance in hospitals, clinics, nursing homes, or emergency treatment facilities, or other health care facilities in areas of practice including, but not limited to: coronary care, intensive care, emergency treatment, surgical care and recovery, obstetrics, pediatrics, outpatient services, home health care, or other such areas of practice;

(C) Performing comfort and safety measures;

(D) Administering treatments and medication; and

(E) Participating in the management and supervision of unlicensed personnel in the delivery of patient care. (Code 1981, § 43-26-32, enacted by Ga. L. 1992, p. 2151, § 1; Ga. L. 1993, p. 471, § 1; Ga. L. 2009, p. 210, § 4/HB 475.)

The 2009 amendment, effective April 29, 2009, added paragraph (1.1).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1953, Jan.-Feb. Sess., p. 333, § 2 are included in the annotations for this Code section.

Board of Examiners cannot change statutory provisions as to qualifications of licensed practical nurses. 1970 Op. Att'y Gen. No. U70-15 (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 333, § 2).

Applicants must submit proof of their successful completion of course of training in approved school. — Since the use of the words "successfully"

and "completed" clearly implies that an applicant must submit proof not only of having undertaken the required course of training, but also of having successfully completed such training, the Georgia Board of Examiners of Licensed Practical Nurses may not accept or approve projected applications for examination for licensure unless proof is properly submitted that an applicant has successfully completed a course of training in an approved school. 1980 Op. Att'y Gen. No. 80-32 (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 333, § 2).

RESEARCH REFERENCES

ALR. — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

43-26-33. Use of titles and abbreviations by licensed practical nurses and applicants.

(a) Any person who is licensed as a practical nurse shall have the right to use the title “Licensed Practical Nurse” and the abbreviation “L.P.N.” and shall identify that he or she is so licensed by displaying either such title or abbreviation on a name tag or similar form of identification during times when such person is providing direct patient care. No other person shall assume such title or use such abbreviation or any other words, letters, signs, or symbols to indicate that such person is a licensed practical nurse in Georgia.

(b) Any applicant for examination who holds an active temporary permit may use the title “Graduate Practical Nurse” and the abbreviation “G.P.N.” until the license to practice practical nursing has been issued except that an applicant who fails the first examination may no longer use the title “Graduate Practical Nurse” or the abbreviation “G.P.N.” An individual who is qualified to use the title “Graduate Practical Nurse” may engage in limited practice as defined by board rules and must practice under the on-site supervision of a registered professional nurse or licensed physician.

(c) No person shall use the title “nurse” or any other title or abbreviation that would represent to the public that a person is authorized to practice nursing unless the person is licensed or otherwise authorized under this article or Article 1 of this chapter. (Code 1981, § 43-26-33, enacted by Ga. L. 1992, p. 2151, § 1; Ga. L. 2000, p. 1154, § 1; Ga. L. 2005, p. 60, § 43/HB 95; Ga. L. 2011, p. 779, § 1B/SB 100.)

The 2011 amendment, effective May 13, 2011, added subsection (c).

43-26-34. Board of examiners created; appointment of members; terms; filling of vacancies; meetings; reimbursement of expenses.

(a) The Georgia Board of Examiners of Licensed Practical Nurses shall consist of seven members appointed by the Governor. The members in office on July 1, 1992, shall serve out the remainder of their respective terms and until their successors are appointed and qualified. Members shall serve a three-year term and until their successors are duly appointed and qualified. No member shall be appointed to more

than two consecutive full terms and, for the purpose of this limitation, an appointment to fill a vacancy for an unexpired term which exceeds two full years shall constitute an appointment for a full term.

(b) A vacancy on the board for any reason other than expiration of the term shall be filled for the remainder of the unexpired term by appointment of the Governor. Vacancies shall be filled in a timely manner.

(c) Each of the seven members appointed to the board shall be a citizen of the United States and a resident of Georgia. One member shall be a registered professional nurse who is currently engaged in practical nurse education and has been a graduate of an accredited or approved school of nursing for a minimum of five years. One member shall be a nurse currently serving in an administrative position in a hospital or nursing home and who is a graduate of an accredited or approved nursing program. One member shall be a consumer. The remaining four members shall be licensed practical nurses and graduates of an accredited or approved school of practical nursing. All members except the consumer shall have a current license in good standing, at least three years' experience in nursing, and shall be currently employed in the health care delivery system. In order to have equal representation of the board members, consideration in selection should be given for geographical location and areas of specialty.

(d) No two members of the current board shall be employed by the same private school, school within the Technical College System of Georgia, private employer, agency of state government, or other public employer. In the event a board member changes employment which causes a conflict defined by this subsection, the position of the member making the change shall be immediately vacant and a new member appointed to fill the vacancy.

(e) The board shall meet a minimum of six times a year and may have called meetings upon notice issued by its chairman.

(f) The members of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2. (Code 1981, § 43-26-34, enacted by Ga. L. 1992, p. 2151, § 1; Ga. L. 2008, p. 335, § 7/SB 435.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, "Georgia" was deleted preceding "Technical College System" in the first sentence of subsection (d).

43-26-35. Duties of board generally.

The board shall:

(1) Be responsible for the enforcement of the provisions of this article and shall be specifically granted all of the necessary duties, powers, and authority to carry out this responsibility;

(2) Be authorized to draft, adopt, amend, repeal, and enforce such rules as it deems necessary for the administration and enforcement of this article in the protection of the public health, safety, and welfare;

(3) License duly qualified applicants by examination, endorsement, or reinstatement;

(4) Enforce qualifications for licensure;

(5) Be authorized to set standards for competency of licensees continuing in or returning to practice;

(6) Be authorized to enact rules and regulations for licensed practical nurses as they apply to the practice of practical nursing;

(7) Be authorized to issue temporary permits;

(8) Renew licenses of licensed practical nurses in accordance with this article;

(9) Develop and enforce reasonable and uniform standards for practical nurse education and practical nurse practice;

(10) Periodically evaluate practical nurse education programs and approve such programs as meeting the board's requirements;

(11) Deny or withdraw approval from noncompliant practical nurse education programs;

(12) Implement the disciplinary process;

(13) Be authorized to issue orders when a license is surrendered to the board while a complaint, investigation, or disciplinary act against such license is pending;

(14) Issue a limited license to practice practical nursing subject to such terms and conditions as the board may impose;

(15) Provide consultation and conduct conferences, forums, studies, and research on practical nurse education and practical nurse practice;

(16) Be authorized to appoint standing or ad hoc committees as necessary to inform and make recommendations to the board about issues and concerns and to facilitate communication among the board, licensees, and the community;

(17) Maintain membership in the national organization which develops and regulates the practical nursing licensing examination;

(18) Be authorized to collect data regarding existing licensed practical nursing resources in Georgia and coordinate planning for practical nursing education and practical nursing practice;

(19) Determine fees; and

(20) Adopt a seal which shall be in the care of the executive director and shall be affixed only in such a manner as prescribed by the board. (Code 1981, § 43-26-35, enacted by Ga. L. 1992, p. 2151, § 1.)

RESEARCH REFERENCES

ALR. — Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 ALR 1388.

Revocation of nurse's license to practice profession, 55 ALR3d 1141.

43-26-36. Application for licensure; examination; temporary permits.

(a)(1) All applicants for a license to practice as a licensed practical nurse shall make application through the board. An applicant for licensure who has not been duly examined according to the prescribed examination approved by the board and who does not otherwise qualify for licensure under this article must apply by examination. Such applicants shall submit to the board a designated fee and written evidence verifying that the applicant:

(A) Is at least 18 years of age;

(B) Has graduated from high school or the equivalent thereof;

(C) Has graduated from an approved nursing education program, as defined in Code Section 43-26-32;

(D) Is in good physical and mental health; and

(E) In the case of an applicant who has graduated from a program conducted in a foreign country, has demonstrated the ability to speak, write, and understand the English language.

(2) A person who is at least 17 years of age and meets all of the criteria set forth in paragraph (1) of this subsection may apply to the board for special consideration to take the examination for licensure.

(b)(1) The board may issue a temporary permit to applicants for licensure by examination pursuant to paragraph (7) of Code Section 43-26-35. A temporary permit issued to an applicant for licensure by examination shall be valid from the date of issuance until the first examination scheduled for the applicant is graded and a license is issued. If the applicant does not appear for the examination, the

temporary permit is automatically invalid the day of the examination. If the applicant fails the examination, the permit shall automatically become invalid when the examination is graded and may not be reissued.

(2) An applicant who fails to appear at the first examination and can show proper cause for failure to appear may receive a second temporary permit upon reapplying to take the examination. Such second permit shall be governed by the same validity provisions as the first permit. Upon failure to appear at a second examination, the applicant shall not be eligible to receive another temporary permit. (Code 1981, § 43-26-36, enacted by Ga. L. 1992, p. 2151, § 1; Ga. L. 1993, p. 471, § 2; Ga. L. 2009, p. 210, § 5/HB 475.)

The 2009 amendment, effective April 29, 2009, substituted the present provisions of subparagraph (a)(1)(C) for the former provisions which read: "Has graduated from a nursing education program approved by this board or which meets criteria similar to, and not less stringent than, those established by this board;".

Cross references. — Immunity from

liability for persons providing information to medical peer review organization, § 31-7-132.

Administrative rules and regulations. — License requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Examiners of Licensed Practical Nurses, Chapter 400-2.

43-26-36.1. Fingerprint record and criminal background checks for applicants for licensure; fees.

Any applicant for licensure under this article shall have satisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation, as determined by the board. Application for a license under this article shall constitute express consent and authorization for the board or its representative to perform a criminal background check. Each applicant who submits an application to the board for licensure agrees to provide the board with any and all information necessary to run a criminal background check, including, but not limited to, classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of such background check. (Code 1981, § 43-26-36.1, enacted by Ga. L. 2011, p. 437, § 1/HB 99.)

Effective date. — This Code section became effective July 1, 2011.

43-26-37. Issuance of license upon passing examination; requirements for admission to subsequent examination.

(a) Any applicant who meets the license requirements stated in Code Section 43-26-36 or subsection (b) of Code Section 43-26-38 and passes

the required exam may be issued a license to practice as a licensed practical nurse.

(b) Effective July 1, 1995, an applicant who has not passed the examination within five years from the date of eligibility of such applicant to take the licensure examination as determined by the board shall be required to complete successfully a regular full-time board approved practical nursing program before such applicant is admitted to another examination. Upon completion of the program, an application may be made for licensure as a new applicant. (Code 1981, § 43-26-37, enacted by Ga. L. 1992, p. 2151, § 1; Ga. L. 1993, p. 471, § 3.)

RESEARCH REFERENCES

ALR. — Single or isolated transactions or occupational licensing requirements, as falling within provisions of commercial 93 ALR2d 90.

43-26-38. License by endorsement; temporary permit.

(a) The board, at its discretion, may issue a license to practice as a licensed practical nurse, without examination, to any person who has a high school diploma or general educational development (GED) diploma and has been duly licensed or registered as a practical or vocational nurse or who is entitled to perform similar service under a different designation under the laws of another state or territory of the United States if the license or registration in that other state or territory is current and in good standing and was issued based upon completion of an approved nursing education program, as defined in Code Section 43-26-32, and passage of an examination, which examination has been determined by the board to be substantially equal to or greater than the requirements for licensure as a licensed practical nurse in this state and if such person has engaged in the active practice of practical nursing as a licensed practical nurse within five years immediately preceding the application; provided, however, that the requirement for active practice shall not apply to an applicant who has graduated from an approved nursing education program within one year of the date of application or who was initially licensed within one year of the date of application.

(b) The board, at its discretion, may issue a license to practice as a licensed practical nurse, with examination, to any person who has a high school diploma or general educational development (GED) diploma and has been duly licensed or registered as a practical or vocational nurse or who is entitled to perform similar service under a different designation under the laws of another state or territory of the United States if the license or registration in that other state or territory is current and in good standing and was issued based upon completion of

an approved nursing education program, as defined in Code Section 43-26-32, except however, such applicant has not been duly examined according to the prescribed examination approved by this board and if such person has engaged in active practice of practical nursing as a licensed practical nurse within five years immediately preceding the application.

(c) Applicants for endorsement who have not been engaged in the active practice of practical nursing as licensed practical nurses for a period which exceeds five years shall be required to complete additional education and training as provided in the rules and regulations of the board, which may include but not be limited to returning to school for full training and taking the licensing examination.

(d) The approval or denial of a license by endorsement under this Code section shall be in the sole discretion of the board, and a denial thereof shall not be considered to be a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The applicant shall be allowed to appear before the board if the applicant so desires.

(e) Nothing in this Code section shall be construed to prevent an applicant who is denied a license by endorsement from taking the examination for licensure, provided that such applicant is otherwise eligible to take the examination and meets the requirements specified.

(f) The board may issue a temporary permit to qualified applicants under such terms and conditions as specified in the rules and regulations of the board, but in no event shall such a temporary permit be issued to an applicant who has failed to pass the required examination. (Code 1981, § 43-26-38, enacted by Ga. L. 1992, p. 2151, § 1; Ga. L. 1993, p. 471, § 4; Ga. L. 1995, p. 354, § 1; Ga. L. 2002, p. 415, § 43; Ga. L. 2009, p. 210, § 6/HB 475.)

The 2009 amendment, effective April 29, 2009, in subsection (a), substituted "nursing education program, as defined in Code Section 43-26-32," for "program", substituted "examination has" for "program and examination have", and inserted "nursing education" near the end; and, in the middle of subsection (b), sub-

stituted "nursing education program, as defined in Code Section 43-26-32," for "program substantially equal to or greater than the requirements of such programs in this state,".

Cross references. — Cooperation between Georgia and other states generally, T. 28, C. 6.

43-26-39. Renewal of license; voluntary surrender; application for reinstatement; temporary permit.

(a) Licenses issued under this article shall be renewed biennially prior to the expiration of the license according to schedules and fees decided by the board and approved by the division director.

(b) A license shall be renewed for any licensed practical nurse who remits the required fee and complies with the requirements established by the board.

(c) The voluntary surrender of a license or the failure to renew a license by the end of an established renewal period shall have the same effect as revocation of said license, subject to reinstatement at the discretion of the board. The board may restore and reissue a license, and, as a condition thereof, may impose any disciplinary sanction provided by Code Section 43-1-19 upon such grounds as specified in Code Sections 43-1-19 and 43-26-40.

(d) Any license that is not renewed by the end of the renewal period may not thereafter be renewed, and the licensee must apply for reinstatement. Applicants for reinstatement who have not been engaged in the active practice of practical nursing as licensed practical nurses for a period which exceeds five years shall be required to obtain such additional education and training as provided in the rules and regulations of the board, which may include but not be limited to returning to school for full training and taking the licensing examination. Upon completion of the program, an application may be made for licensure as a new applicant.

(e) The board may issue a temporary permit to qualified applicants under such terms and conditions as specified in the rules and regulations of the board, but in no event shall such a temporary permit be issued to an applicant who has failed to pass the required examination.

(f) Other criteria for reinstatement may be determined by the rules of the board, including, but not limited to, the following: additional coursework, a refresher course, supervised clinical practice, or examination by the board. (Code 1981, § 43-26-39, enacted by Ga. L. 1992, p. 2151, § 1; Ga. L. 1993, p. 471, § 5; Ga. L. 2000, p. 1706, § 19.)

43-26-40. Refusal to grant license; revocation of license; disciplining of licensees.

(a) In addition to the authority granted in Code Section 43-1-19, the board shall have the authority to refuse to grant a license to an applicant, to revoke the license of a licensee, or to discipline a licensee upon a finding by the board that the applicant or licensee has:

(1) Been convicted of a felony, a crime involving moral turpitude, or any crime violating a federal or state law relating to controlled substances or dangerous drugs or marijuana in the courts of this state, any other state, territory, or country, or in the courts of the United States, including, but not limited to, a plea of nolo contendere entered to the charge;

(2) Had a license to practice nursing revoked, suspended, or annulled by any lawful licensing authority, had other disciplinary action taken by any lawful licensing authority, or was denied a license by any lawful licensing authority;

(3) Engaged in any unprofessional, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice need not have resulted in actual injury to any person. As used in this paragraph, the term "unprofessional conduct" includes the improper charting of medication and any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing nursing practice;

(4) Violated or attempted to violate a law or any lawfully promulgated rule or regulation of this state, any other state, the board, the United States, or any other lawful authority, without regard to whether the violation is criminally punishable, which statute, law, or rule or regulation relates to or in part regulates the practice of nursing, when the licensee or applicant knows or should know that such action is violative of such law or rule;

(5) Violated a lawful order of the board previously entered by the board in a disciplinary hearing; or

(6) Displayed an inability to practice nursing as a licensed practical nurse or graduate practical nurse with reasonable skill and safety due to illness, use of alcohol, drugs, narcotics, chemicals, or any other types of material, or as a result of any mental or physical condition:

(A) In enforcement of this paragraph, the board may, upon reasonable grounds, require a licensee or applicant to submit to a mental or physical examination by a board approved health care professional. The expense of such mental or physical examination shall be borne by the licensee or applicant. The results of such examination shall be admissible in any hearing before the board, notwithstanding any claim of privilege under contrary law or rule. Every person who is licensed to practice practical nursing as a licensed practical nurse or graduate practical nurse in this state, or an applicant for examination, endorsement, or reinstatement shall be deemed to have given such person's consent to submit to such mental or physical examination and to have waived all objections to the admissibility of the results in any hearing before the board upon the grounds that the same constitutes a privileged communication. If a licensee or applicant fails to submit to such an examination when properly directed to do so by the board, unless such failure was due to circumstances beyond that person's control, the board may enter a final order upon proper notice, hearing, and proof of such refusal. Any licensee or applicant who is prohibited

from practicing under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate to the board that such person can resume or begin to practice practical nursing as a licensed practical nurse or graduate practical nurse with reasonable skill and safety; and

(B) In enforcement of this paragraph, the board may, upon reasonable grounds, obtain any and all records relating to the mental or physical condition of a licensee or applicant, including psychiatric records; such records shall be admissible in any hearing before the board, notwithstanding any privilege under a contrary rule, law, or statute. Every person who is licensed in this state or who shall file an application for said license shall be deemed to have given such person's consent to the board's obtaining such records and to have waived all objections to the admissibility of such records in any hearing before the board upon the grounds that the same constitute a privileged communication.

(b) Neither denial of an initial license, the issuance of a private reprimand, the denial of a license by endorsement under Code Section 43-26-38, nor the denial of a request for reinstatement of a license on the grounds that the applicant or licensee has failed to meet the minimum requirements shall be considered a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; and notice and hearing within the meaning of Chapter 13 of Title 50 shall not be required, but the applicant or licensee shall be allowed to appear before the board if he or she so requests. (Code 1981, § 43-26-40, enacted by Ga. L. 1992, p. 2151, § 1.)

Code Commission notes.— Pursuant to Code Section 28-9-5, in 1992, in the introductory language of paragraph (a)(6), a comma was inserted following "mate-

rial" and a colon was substituted for a period at the end, and "; and" was substituted for a period at the end of subparagraph (a)(6)(A).

43-26-41. Exceptions to licensure requirements; burden of proof.

(a) No provision in this article shall be construed to require licensure in Georgia as a licensed practical nurse in:

(1) The practice of practical nursing by students when such practice is an integral part of a curriculum in a board approved practical nursing education program leading to initial licensure;

(2) The rendering of assistance by anyone in the case of an emergency or disaster;

(3) The incidental care of the sick by members of the family, friends, or persons primarily utilized as housekeepers, provided that such care does not constitute the practice of practical nursing within

the meaning of this article and individuals do not hold themselves out as being licensed practical nurses;

(4) Caring for the sick in accordance with tenets or practices of any church or religious denomination which teaches reliance upon spiritual means through prayer for healing;

(5) The performance of auxiliary services in the care of patients when such care and activities do not require the knowledge and skill required of a person practicing practical nursing as a licensed practical nurse and when such care and activities are performed under orders or directions of a licensed physician, licensed dentist, licensed podiatrist, or person licensed to practice nursing as a registered professional nurse;

(6) The practice of practical nursing as a licensed practical nurse by a person so licensed to practice in another state who is employed by the United States government or any bureau, division, or agency thereof while in the discharge of that person's official duties; and

(7) The practice of practical nursing as a licensed practical nurse by a person currently licensed to practice in another state who is employed by an individual, agency, or corporation located in another state, whose employment responsibilities include transporting patients into, out of, or through this state for a period not to exceed 24 hours.

(b) In a civil or administrative proceeding under this article, a person claiming an exemption or an exception pursuant to subsection (a) of this Code section has the burden of proving this exemption or exception. In a criminal proceeding, the burden of going forward with evidence of a claim of exemption or exception pursuant to subsection (a) of this Code section is on the person claiming the exemption or exception. (Code 1981, § 43-26-41, enacted by Ga. L. 1992, p. 2151, § 1.)

43-26-42. Criminal violations.

It shall be a misdemeanor for any person, including any corporation, association, or individual, to:

(1) Practice practical nursing as a licensed practical nurse without a valid current license, except as otherwise permitted under Code Section 43-26-41;

(2) Practice practical nursing as a licensed practical nurse under cover of any diploma, license, or record illegally or fraudulently obtained, signed, or issued;

(3) Practice practical nursing as a licensed practical nurse during the time the license is suspended, revoked, surrendered, or administratively revoked for failure to renew;

(4) Use any words, abbreviations, figures, letters, title, sign, card, or device implying that such person is a licensed practical nurse or graduate practical nurse unless such person is duly licensed to practice under the provisions of this article;

(5) Fraudulently furnish a license to practice nursing as a licensed practical nurse;

(6) Knowingly employ any person to practice practical nursing as a licensed practical nurse who is not a licensed practical nurse;

(7) Conduct a nursing education program in this state unless the program has been approved by the board; or

(8) Knowingly aid or abet any person to violate this article. (Code 1981, § 43-26-42, enacted by Ga. L. 1992, p. 2151, § 1.)

Cross references. — False or fraudulent advertising, § 10-1-420 et seq.

43-26-43. Termination.

Repealed by Ga. L. 1993, p. 91, § 43, effective March 22, 1993.

Editor's notes. — This Code section was based on Ga. L. 1992, p. 2151, § 1.

ARTICLE 3

GEORGIA QUALIFIED MEDICATION AIDE

43-26-50 through 43-26-60.

Repealed by Ga. L. 2006, p. 125, § 1/SB 480, effective July 1, 2011.

Editor's notes. — This article consisted of Code Sections 43-26-50 through 43-26-60, relating to qualified medication aides, and was based on Code 1981, §§ 43-6-50 — 43-26-60, enacted by Ga. L. 2006, p. 125, § 1/SB 480; Ga. L. 2008, p. 335, § 7/SB 435; Ga. L. 2009, p. 453, §§ 1-45, 1-46/HB 228.

CHAPTER 27

NURSING HOME ADMINISTRATORS

Sec.		Sec.	
43-27-1.	Definitions.	43-27-7.	Reciprocity; provisional license.
43-27-2.	Creation of board; members.	43-27-8.	Biennial license fees and renewal; applicability to superintendent of state hospital or facility.
43-27-3.	Election of officers; rules and regulations; reimbursement of members; division director as secretary of board.	43-27-9.	Restoration of suspended or revoked license.
43-27-4.	Board's authority to determine qualifications of administrators.	43-27-10.	Local fees.
43-27-5.	General powers and duties of board; limitations.	43-27-11.	Penalty.
43-27-6.	License requirement for nursing home administrators; qualifications.	43-27-12.	Termination [Repealed].

Cross references. — Financing residential care facilities for the elderly, § 31-7-110 et seq. Long-term care ombudsman program, § 31-8-50 et seq. Reporting abuse or exploitation of residents in long-term care facilities, § 31-8-80 et seq. Rights of persons residing in

long-term care facilities generally, § 31-8-100 et seq. Georgia State War Veterans' Home, § 38-4-50 et seq. Exemptions from law regarding public officials' conflicts of interest relating to Medicaid and medicare payments, § 45-10-25.

JUDICIAL DECISIONS

Intent of Ga. L. 1970, p. 573. — Ga. L. 1970, p. 573 is primarily and almost solely intended to protect the public from improper nursing home administrators.

Culverhouse v. Atlanta Ass'n for Convalescent Aged Persons, 127 Ga. App. 574, 194 S.E.2d 299 (1972).

OPINIONS OF THE ATTORNEY GENERAL

Effective date of Ga. L. 1968, p. 1143 was April 8, 1968. 1969 Op. Att'y Gen. No. 69-411.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 39 Am. Jur. 2d, Health, §§ 1 et seq., 26 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 72 Am. Jur. 2d, States, Territories and De-

pendencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

Am. Jur. Proof of Facts. — False Imprisonment in Connection with Confinement in Nursing Home or Hospital, 40 POF2d 81.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S.,

Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 39A C.J.S., Health and Environment, §§ 3 et seq., 37 et seq., 48 et seq. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A

C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

Licensing and regulation of nursing or rest homes, 53 ALR4th 689.

43-27-1. Definitions.

As used in this chapter, the term:

(1) "Board" means the State Board of Nursing Home Administrators.

(2) "Nursing home" has the same meaning as prescribed by the Department of Community Health in the rules and regulations for nursing homes.

(3) "Nursing home administrator" means a person who operates, manages, or supervises or is in charge of a nursing home. (Ga. L. 1968, p. 1143, § 1; Ga. L. 1970, p. 573, § 1; Ga. L. 1986, p. 846, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Community Health" for "Department of Human Resources" in paragraph (2).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, "this" was substituted for "the" in the introductory language.

JUDICIAL DECISIONS

Cited in *Culverhouse v. Atlanta Ass'n for Convalescent Aged Persons*, 127 Ga. App. 574, 194 S.E.2d 299 (1972).

RESEARCH REFERENCES

C.J.S. — 7 C.J.S., Asylums, § 5 et seq.

43-27-2. Creation of board; members.

(a) There is created the State Board of Nursing Home Administrators, which shall consist of 13 members, none of whom may be employees of the United States government or of this state, and the commissioner of human services or his or her designee, who shall serve as ex officio member of the board, and the commissioner of community health or his or her designee, who shall serve as ex officio member of the

board. The members of the board shall be appointed by the Governor and confirmed by the Senate, as follows:

(1) One member who is a licensed medical doctor in this state and who is not a nursing home administrator or pecuniarily interested in any nursing home;

(2) One member who is a registered nurse in this state and who is not a nursing home administrator or pecuniarily interested in any nursing home;

(3) One member who is an educator with a graduate degree and specializing in the field of gerontology and who is not a nursing home administrator or pecuniarily interested in any nursing home;

(4) Three members of the public at large who are not nursing home administrators or pecuniarily interested in any nursing home or have any connection with the nursing home industry whatsoever. Two of these three public, at-large positions shall be appointed from a list of three persons for each of these two positions submitted by the Board of Community Health. The Governor is vested with complete discretion in appointing the third member for one of these three public, at-large positions;

(5) One member who is a hospital administrator in this state, who is the holder of a master's degree in hospital administration, and who is not a nursing home administrator or pecuniarily interested in any nursing home; and

(6) Six members, at least one of whom shall represent nonproprietary nursing homes, who are licensed nursing home administrators in this state.

(b) The term for all members shall be three years from the date of appointment. A member may be removed as provided in Code Section 43-1-17. All vacancies shall be filled by the Governor for the unexpired terms in accordance with the requirements for appointment to the vacant position. (Ga. L. 1968, p. 1143, § 6; Ga. L. 1969, p. 744, § 1; Ga. L. 1970, p. 573, § 1; Ga. L. 1976, p. 1184, §§ 2, 3; Ga. L. 1979, p. 385, § 1; Ga. L. 1980, p. 536, § 2; Ga. L. 1986, p. 846, § 2; Ga. L. 1992, p. 2770, § 1; Ga. L. 1999, p. 296, § 24; Ga. L. 2009, p. 453, §§ 1-6, 1-47/HB 228.)

The 2009 amendment, effective July 1, 2009, in subsection (a), in the first sentence of the introductory language, purported to substitute "commissioner of community health" for "commissioner of human resources", substituted "human services or his or her designee" for "human resources or his designee" near the mid-

dle, and inserted "or her" near the end; in paragraph (a)(4), substituted "public, at-large" for "public-at-large" in the last two sentences, and substituted "Board of Community Health" for "Board of Human Resources" in the second sentence.

Code Commission notes. — The amendment of subsection (a) of this Code

section by Ga. L. 2009, p. 453, § 1-6, irreconcilably conflicted with and was treated as superseded by Ga. L. 2009, p. 453, § 1-47. See Singer, *Statutes and Statutory Construction*, sec. 23:18 (6th ed. 2002).

Law reviews. — For comment on *Rogers v. Medical Ass'n*, 244 Ga. 151, 259

S.E.2d 85 (1979), invalidating Georgia statute requiring Governor's appointments to Composite State Board of Medical Examiners be made solely from nominees submitted by state medical society as an unconstitutional delegation of legislative authority to a private organization, see 29 Emory L.J. 1183 (1980).

JUDICIAL DECISIONS

Cited in *Baranan v. State Bd. of Nursing Home Adm'rs*, 143 Ga. App. 605, 239 S.E.2d 533 (1977).

43-27-3. Election of officers; rules and regulations; reimbursement of members; division director as secretary of board.

The board shall elect a chairman and vice-chairman from its membership and such other officers as it shall deem necessary and shall adopt rules and regulations to govern its proceedings. Each member of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2. The division director shall be the executive secretary of the board. (Ga. L. 1968, p. 1143, § 6; Ga. L. 1969, p. 744, § 3; Ga. L. 1980, p. 536, § 4; Ga. L. 2000, p. 1706, § 19.)

43-27-4. Board's authority to determine qualifications of administrators.

The board shall have sole and exclusive authority to determine the qualifications, skill, and fitness of any person to serve as an administrator of a nursing home under this chapter; and the holder of a license under this chapter shall be deemed qualified to serve as the administrator of a nursing home. (Ga. L. 1968, p. 1143, § 7; Ga. L. 1986, p. 846, § 3.)

43-27-5. General powers and duties of board; limitations.

(a) The board shall have the following powers and duties:

(1) To issue, renew, and reinstate the licenses of duly qualified applicants for licensure;

(2) To deny, suspend, revoke, or otherwise sanction licenses to practice as a nursing home administrator;

(3) To initiate investigations for the purpose of discovering violations of this chapter;

(4) To initiate investigations for the purpose of discovering violations by a nursing home administrator of the rules, regulations, or statutes of the Department of Community Health or the Department of Human Services, provided that the board shall investigate those violations only after revocation, limitation, or restriction of participation of the nursing home of which such individual is the administrator in the medical assistance program or the license issued by the Department of Community Health and make written findings as to the causes of the alleged violations;

(5) To conduct hearings upon charges into alleged violations of this chapter;

(6) To prepare or approve all examinations for licensure as a nursing home administrator;

(7) To develop, impose, and enforce standards which must be met by individuals in order to receive or maintain a license as a nursing home administrator;

(8) To conduct a continuing study and investigation of nursing homes and administrators of nursing homes within the state for the purpose of improving the standards imposed for the licensing of such administrators; and

(9) To adopt such rules and regulations as shall be reasonably necessary for the implementation and enforcement of this chapter. The board shall have the authority to establish, provide, or approve various education programs or courses for nursing home administrators and to prescribe rules and regulations requiring applicants for licenses as nursing home administrators to attend such programs or courses as a prerequisite to their being admitted to the examination or issued a license and requiring licensed nursing home administrators to attend such programs or courses as a prerequisite to their being issued any license renewal.

(b) Nothing in this chapter or in the rules and regulations adopted under this chapter shall be construed to require an applicant for a license as a nursing home administrator who is certified by a recognized church or religious denomination which teaches reliance on spiritual means alone for healing as having been approved to administer institutions certified by such church or denomination for the care and treatment of the sick in accordance with its teachings to demonstrate proficiency in any medical techniques or to meet any medical educational qualifications or medical standards not in accord with the remedial care and treatment provided in such institutions. (Ga. L. 1968, p. 1143, § 8; Ga. L. 1970, p. 573, § 5; Ga. L. 1973, p. 284, § 1; Ga. L. 1986, p. 846, § 4; Ga. L. 1999, p. 296, § 24; Ga. L. 2009, p. 453, § 1-48/HB 228.)

The 2009 amendment, effective July 1, 2009, in paragraph (a)(4), substituted "Department of Human Services" for "Department of Human Resources" near the middle, and substituted "Department of Community Health" for "Department of Human Resources" near the end.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, "under

this chapter" was substituted for "hereunder" in subsection (b).

Administrative rules and regulations. — Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia State Board of Nursing Home Administrators, Chapter 393-1 et seq.

JUDICIAL DECISIONS

Board has authority to establish number of course hours prerequisite to license renewal and attendance at such courses is mandatory. *Baranan v. State Bd. of Nursing Home Adm'rs*, 143 Ga. App. 605, 239 S.E.2d 533 (1977).

O.C.G.A. § 43-27-5(a)(7) does not violate equal protection or due process principles. — Requirement that party must incur certain expenses and must

involuntarily attend courses does not discriminate against that party in violation of equal protection rights nor does it violate due process of law; all others similarly situated must bear similar burdens in order to obtain a license renewal. *Baranan v. State Bd. of Nursing Home Adm'rs*, 143 Ga. App. 605, 239 S.E.2d 533 (1977).

RESEARCH REFERENCES

ALR. — Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 ALR 1388.

43-27-6. License requirement for nursing home administrators; qualifications.

(a) No person shall serve as a nursing home administrator until first obtaining a license from the board.

(b) The board shall issue licenses as nursing home administrators only to persons who:

- (1) Are at least 21 years of age;
- (2) Are of reputable and responsible character;
- (3) Reserved;

(4) Meet the standards and the criteria established by the board to evidence the applicant's qualifications by training and experience to operate a nursing home, provided that two years of experience working in a nursing home shall be equivalent to one year of any academic education and training requirements established by the board; and such experience may be substituted without limitation for such education and training requirements; and

(5) Satisfactorily pass a written or oral examination, or both, approved by the board to determine the qualifications of the applicant

to operate a nursing home. (Ga. L. 1968, p. 1143, § 3; Ga. L. 1970, p. 573, § 3; Ga. L. 1980, p. 536, § 2; Ga. L. 1986, p. 846, § 5.)

JUDICIAL DECISIONS

Plaintiff must prove licensure in order to recover for services. — Although fact of license need not be alleged, it must be shown to entitle plaintiff to

recover. *Culverhouse v. Atlanta Ass'n for Convalescent Aged Persons*, 127 Ga. App. 574, 194 S.E.2d 299 (1972).

RESEARCH REFERENCES

ALR. — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

43-27-7. Reciprocity; provisional license.

(a) The board, in its discretion and otherwise subject to this chapter and the rules and regulations of the board promulgated under this chapter prescribing the qualifications for a nursing home administrator license, may issue a license to a nursing home administrator who has been issued a license by the proper authorities of any state or issued a certificate of qualification by any national organization, upon payment of a fee to be fixed by the board and upon submission of evidence satisfactory to the board that such other state or national organization maintains a system and standard of qualifications and examinations for a nursing home administrator license or certificate which is substantially equivalent to those required in this state.

(b) An applicant for licensure who meets the qualifications of subsection (a) of this Code section may be issued a provisional license by the board to practice as a nursing home administrator which shall be valid until the results of any examination required by the board and for which the applicant is scheduled to take are released. An applicant who has been issued a provisional license will be scheduled by the board to take the first available examination. If the applicant passes the examination, the provisional license shall be valid until the permanent license is issued. If the applicant fails to appear for the examination or if the applicant fails the examination, the provisional license shall become invalid immediately. The board may authorize the issuance of a second provisional license only to an applicant who provides just cause to the board as to why the applicant was unable to appear for the examination. (Ga. L. 1973, p. 284, § 4; Ga. L. 1980, p. 536, § 6; Ga. L. 1986, p. 846, § 6; Ga. L. 1996, p. 1255, § 1.)

Cross references. — Cooperation between Georgia and other states generally, T. 28, C. 6.

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 1986, “under this chapter” was substituted for “thereunder” near the beginning of subsection (a).

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 8, 9.

C.J.S. — 81A C.J.S., States, § 29.

43-27-8. Biennial license fees and renewal; applicability to superintendent of state hospital or facility.

Each person licensed as a nursing home administrator shall be required to pay a biennial license fee in an amount to be fixed by the board. Such license shall expire on the renewal date established by the division director and shall be renewable for two years upon payment of the biennial license fee. No license fee shall be required of any superintendent of a state hospital or facility during such time as the superintendent is acting or serving in the capacity as a nursing home administrator in a state institution and as an employee of the state. (Ga. L. 1968, p. 1143, § 4; Ga. L. 1970, p. 573, § 4; Ga. L. 1980, p. 536, § 3; Ga. L. 2000, p. 1706, § 19.)

JUDICIAL DECISIONS

Cited in *Culverhouse v. Atlanta Ass'n for Convalescent Aged Persons*, 127 Ga. App. 574, 194 S.E.2d 299 (1972).

43-27-9. Restoration of suspended or revoked license.

The board may, for good cause shown and under such conditions as it may prescribe, restore a license to any person whose license has been suspended or revoked. (Ga. L. 1973, p. 284, § 3.)

43-27-10. Local fees.

No provision of this chapter shall be construed as prohibiting or preventing a municipality or county from fixing, charging, assessing, or collecting any license fee, registration fee, tax, or gross receipt tax on any profession covered by this chapter or upon any related profession or any one engaged in any related profession governed by this chapter. (Ga. L. 1968, p. 1143, § 11.)

43-27-11. Penalty.

(a) Any person who acts or serves in the capacity of a nursing home administrator without holding a license as a nursing home administra-

tor issued in accordance with this chapter shall be guilty of a misdemeanor.

(b) Any person not licensed under this chapter who holds himself out to be a licensed nursing home administrator or uses the initials N.H.A. after his name shall be guilty of a misdemeanor. (Ga. L. 1968, p. 1143, § 9; Ga. L. 1976, p. 1184, § 1.)

43-27-12. Termination.

Repealed by Ga. L. 1992, p. 3137, § 22, effective July 1, 1992.

Editor's notes. — The Code section Ga. L. 1986, p. 846, § 7 and Ga. L. 1992, p. 2770, § 2. was based on Ga. L. 1981, Ex. Sess., p. 8;

CHAPTER 28

OCCUPATIONAL THERAPISTS

Sec.		Sec.	
43-28-1.	Short title.		apy techniques involving physical agent modalities.
43-28-2.	Declaration of purpose.	43-28-9.	Qualifications of license applicants; waiver.
43-28-3.	Definitions.	43-28-10.	Examinations.
43-28-4.	Creation of board; members.	43-28-11.	Waiver of examination; reciprocity.
43-28-5.	Division director as secretary of board; subpoenas.	43-28-12.	Issuance of license; fees; limited permits; use of titles and abbreviations.
43-28-6.	(Effective until January 1, 2013. See note.) Service of process and documents on division director; records of board as prima-facie evidence.	43-28-13.	Denial, refusal to renew, suspension, or revocation of licenses; probation; fines; reinstatement.
43-28-6.	(Effective January 1, 2013. See note.) Service of process and documents on division director.	43-28-14.	Renewal or reinstatement of expired licenses; renewal of suspended licenses.
43-28-7.	General powers and duties of board; continuing professional education.	43-28-15.	Exceptions to operation of chapter.
43-28-8.	License requirement for occupational therapists.	43-28-16.	Penalty.
43-28-8.1.	License requirements for ther-	43-28-17.	Termination [Repealed].

Law reviews. — For comment, "The Psychotherapist-Client Testimonial Privi-

lege: Defining the Professional Involved," see 34 Emory L.J. 777 (1985).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S.,

Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

43-28-1. Short title.

This chapter shall be known and may be cited as the "Georgia State Occupational Therapy Licensing Act." (Ga. L. 1976, p. 993, § 1.)

43-28-2. Declaration of purpose.

This chapter was enacted to safeguard the public health, safety, and welfare and to assure the availability of occupational therapy services of high quality to persons in need of such services. It is the purpose of this chapter to provide for the regulation of persons offering occupational therapy services to the public. (Ga. L. 1976, p. 993, § 2.)

43-28-3. Definitions.

As used in this chapter, the term:

(1) "Association" means the Georgia Occupational Therapy Association.

(2) "Board" means the State Board of Occupational Therapy.

(3) "License" means a valid and current certificate of registration issued by the division director.

(4) "Occupational therapist" means a person licensed to practice occupational therapy as defined in this chapter and whose license is in good standing.

(5) "Occupational therapy" includes but is not limited to the following:

(A) Evaluation and treatment of individuals whose abilities to cope with the tasks of living are threatened or impaired by developmental deficiencies, the aging process, learning disabilities, poverty and cultural differences, physical injury or disease, psychological and social disabilities, or anticipated dysfunction. The treatment utilizes task oriented activities to prevent or correct physical, cognitive, or emotional deficiencies or to minimize the disabling effect of these deficiencies in the life of the individual;

(B) Such evaluation techniques as assessment of sensory motor abilities, assessment of the development of self-care activities and capacity for independence, assessment of the physical capacity for prevocational and work tasks, assessment of play and leisure performance, and appraisal of living areas for persons with disabilities; and

(C) Specific occupational therapy techniques, such as activity analysis, activities of daily living skills, the fabrication and application of splints and adaptive devices, sensory motor activities, the use of specifically designed manual and creative activities, guidance in the selection and use of adaptive equipment, specific exercises and physical agent modalities to enhance physical functional performance, work capacities, and treatment techniques for

physical capabilities and cognitive retraining. Such techniques are applied in the treatment of individual patients or clients, in groups, or through social systems.

(6) "Occupational therapy aide" means a person who assists the occupational therapist and the occupational therapy assistant in the practice of occupational therapy and who works under the direct supervision of the occupational therapist.

(7) "Occupational therapy assistant" means a person licensed to assist the occupational therapist in the practice of occupational therapy under the supervision of or with the consultation of the licensed occupational therapist and whose license is in good standing.

(8) "Person" means a natural person only, not a legal entity.

(9) "Physical agent modalities" means treatment techniques which utilize heat, light, sound, cold, electricity, or mechanical devices and also means electrical therapeutic modalities which induce heat or electrical current beneath the skin, including but not limited to therapeutic ultrasound, galvanism, microwave, diathermy, and electromuscular stimulation, and also means hydrotherapy. (Ga. L. 1976, p. 993, § 3; Ga. L. 1991, p. 379, §§ 1, 2; Ga. L. 1994, p. 97, § 43; Ga. L. 1995, p. 1302, § 15; Ga. L. 2000, p. 1706, § 19.)

RESEARCH REFERENCES

ALR. — Right of corporation to engage in business, trade or activity requiring license from public, 165 ALR 1098.

43-28-4. Creation of board; members.

(a) There is established the State Board of Occupational Therapy.

(b) The board shall consist of six members who shall be appointed by the Governor and confirmed by the Senate. The members of the board shall be citizens of the United States and residents of this state for at least one year prior to their appointment. Five members of the board shall have been engaged in rendering services to the public, teaching, or research in occupational therapy for at least three years immediately preceding their appointment and may be occupational therapists or occupational therapy assistants and shall at all times be holders of valid licenses for the practice of occupational therapy in this state. All of such members shall fulfill the requirements for licensure of this chapter. The sixth member shall be appointed from the public at large and shall have no connection whatsoever with the profession or practice of occupational therapy.

(c) The board shall, within 90 days after July 1, 1976, be selected as provided in subsection (b) of this Code section. The members of the first

board shall serve the following terms: two members for a term of one year, two members for a term of two years, and one member for a term of three years. At the expiration of the above terms, board members shall be appointed in the same manner as the initial appointment for a period of four years; but no person shall be appointed to serve more than two consecutive terms. Terms shall begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the first members who shall serve through the last calendar day of the year in which they are appointed before commencing the terms prescribed by this Code section.

(d) The initial term of the member appointed from the public at large shall expire on June 30, 1984; thereafter, successors shall be appointed for a term of four years.

(e) When a vacancy occurs on the board, the Governor shall appoint a member to fill the unexpired term.

(f) The Governor, after notice and opportunity for hearing by the board, may remove any member of the board for neglect of duty, incompetence, revocation or suspension of his license, or other dishonorable conduct. After such removal or vacancy due to other reasons, the Governor shall appoint a successor to the unexpired term. (Ga. L. 1976, p. 993, § 4; Ga. L. 1980, p. 61, § 1.)

Law reviews. — For comment on *Rogers v. Medical Ass'n*, 244 Ga. 151, 259 S.E.2d 85 (1979), invalidating Georgia statute requiring Governor's appointments to Composite State Board of Medi-

cal Examiners be made solely from nominees submitted by state medical society as an unconstitutional delegation of legislative authority to a private organization, see 29 Emory L.J. 1183 (1980).

43-28-5. Division director as secretary of board; subpoenas.

(a) The division director shall be secretary of the board and in addition to his powers and duties prescribed by Chapter 1 of this title shall perform such other administrative duties as may be prescribed by the board.

(b) In a contested case, the division director on behalf of the board shall have the power to subpoena throughout the state witnesses, designated documents, papers, books, accounts, letters, photographs, and objects or other tangible things.

(c) The division director, guided by the recommendations of the board, shall act in all matters relating to this chapter. (Ga. L. 1976, p. 993, § 8; Ga. L. 2000, p. 1706, § 19.)

43-28-6. (Effective until January 1, 2013. See note.) Service of process and documents on division director; records of board as prima-facie evidence.

(a) All legal process and all documents required by law to be served upon or filed with the board shall be served upon or filed with the division director at his or her office.

(b) All official records of the board or affidavits by the division director certifying the content of such records shall be prima-facie evidence of all matters required to be kept therein. (Ga. L. 1976, p. 993, § 9; Ga. L. 2000, p. 1706, § 19; Ga. L. 2002, p. 415, § 43.)

Editor's notes. — Code Section 43-28-6 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

43-28-6. (Effective January 1, 2013. See note.) Service of process and documents on division director.

All legal process and all documents required by law to be served upon or filed with the board shall be served upon or filed with the division director at his or her office. (Ga. L. 1976, p. 993, § 9; Ga. L. 2000, p. 1706, § 19; Ga. L. 2002, p. 415, § 43; Ga. L. 2011, p. 99, § 70/HB 24.)

The 2011 amendment, effective January 1, 2013, deleted the former subsection (a) designation and deleted former subsection (b) which read: "All official records of the board or affidavits by the division director certifying the content of such records shall be prima-facie evidence of all matters required to be kept therein." See editor's note for applicability.

Editor's notes. — Code Section

43-28-6 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

Ga. L. 2011, p. 99, § 101, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

43-28-7. General powers and duties of board; continuing professional education.

(a) The board shall administer, coordinate, and enforce this chapter.

(b) The board shall have the responsibility of evaluating the qualifications and providing for the examination of applicants for licensure under this chapter and shall assist the division director in carrying out this chapter. The division director shall have the authority to contract with an outside agency for services providing for the supervision and administration of the examination as needed.

(c) The board may issue subpoenas, examine witnesses, and administer oaths and may investigate allegations of practices violating this chapter.

(d) The board shall adopt rules and regulations relating to professional conduct to carry out the policy of this chapter, including, but not limited to, regulations relating to professional licensure and the establishment of ethical standards of practice for persons holding a license to practice occupational therapy in this state and may amend or repeal the same in accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.”

(e) The board shall conduct such hearings and keep such records and minutes as are necessary to carry out its functioning. It shall provide reasonable public notice to the appropriate persons of the time and place of all hearings authorized under this chapter in such a manner and at such times as it may determine by its rules and regulations.

(f) The board shall prepare or approve all examinations of applicants for license at least twice a year, determine the qualifications and authorize the issuance of licenses to qualified occupational therapists and occupational therapy assistants, issue and renew licenses, suspend or revoke licenses in the manner provided, and determine the qualifications and approved qualified occupational therapy schools and courses in occupational therapy for the purpose of determining qualifications of applicants for licensure.

(g) The board may provide for the continuing professional education of persons subject to this chapter by appropriate regulation. (Ga. L. 1976, p. 993, § 5; Ga. L. 1982, p. 2224, § 2; Ga. L. 1991, p. 379, § 3; Ga. L. 2000, p. 1706, § 19.)

Administrative rules and regulations. — Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia State Board of Occupational Therapy, Chapter 671-1 et seq.

43-28-8. License requirement for occupational therapists.

No person shall:

- (1) Practice occupational therapy; or
- (2) Hold himself or herself out as an occupational therapist or an occupational therapy assistant or as being able to render occupational therapy services in this state unless that person is licensed in accordance with this chapter. (Ga. L. 1976, p. 993, § 10; Ga. L. 1988, p. 1518, § 1; Ga. L. 1993, p. 1042, § 1.)

RESEARCH REFERENCES

ALR. — Failure to procure occupational validity or enforceability of contract, 30 or business license or permit as affecting ALR 834; 42 ALR 1226; 118 ALR 646.

43-28-8.1. License requirements for therapy techniques involving physical agent modalities.

(a) No person shall utilize occupational therapy techniques involving physical agent modalities unless such person:

(1) Is licensed according to this chapter; and

(2) Has utilized such modalities before July 1, 1991, furnishes to the board prior to July 1, 1992, sufficient proof of such prior use, and demonstrates to the board competence in the use of such modalities determined by the board to have been so used prior to July 1, 1991; or

(3) Has successfully completed a minimum of 90 hours of instruction or training approved by the board which covers the following subjects:

(A) Principles of physics related to specific properties of light, water, temperature, sound, or electricity, as indicated by selected modality;

(B) Physiological, neurophysiological, and electrophysiological, as indicated, changes which occur as a result of the application of the selected modality;

(C) The response of normal and abnormal tissue to the application of the modality;

(D) Indications and contraindications related to the selection and application of the modality;

(E) Guidelines for treatment or administration of the modality within the philosophical framework of occupational therapy;

(F) Guidelines for educating the patient including instructing the patient as to the process and possible outcomes of treatment, including risks and benefits;

(G) Safety rules and precautions related to the selected modality;

(H) Methods for documenting the effectiveness of immediate and long-term effects of treatment; and

(I) Characteristics of the equipment including safe operation, adjustment, and care of the equipment.

(b) The board shall promulgate rules and regulations specifically pertaining to the use of physical agent modalities by a person licensed under this chapter. (Code 1981, § 43-28-8.1, enacted by Ga. L. 1991, p. 379, § 4; Ga. L. 1994, p. 97, § 43.)

43-28-9. Qualifications of license applicants; waiver.

(a) An applicant applying for a license as an occupational therapist or as an occupational therapy assistant shall file an application, on forms provided by the board, showing to the satisfaction of the board that such applicant:

(1) Is of good moral character;

(2) Has successfully completed the academic requirements of an educational program in occupational therapy recognized by the board, with concentration in biological or physical science, psychology, and sociology and with education in selected manual skills. For an occupational therapist or occupational therapy assistant, such a program shall be accredited by a recognized accrediting agency acceptable to the board. Other comparable educational programs such as those approved by the World Federation of Occupational Therapists may be recognized by the board upon evaluation of detailed program and course content;

(3) Has successfully completed a period of supervised field work experience at a recognized educational institution or a training program accredited as provided in paragraph (2) of this subsection. For an occupational therapist, a minimum of six months of supervised field work experience is required. For an occupational therapy assistant, a minimum of two months of supervised field work experience is required; and

(4) Has passed an examination as provided for in Code Section 43-28-10.

(b) An applicant not meeting the requirements of subsection (a) of this Code section must indicate to the board that he or she has obtained a waiver of such requirements pursuant to Code Section 43-28-11. (Ga. L. 1976, p. 993, § 12; Ga. L. 1991, p. 379, § 5; Ga. L. 1993, p. 1042, § 2; Ga. L. 2010, p. 266, § 31/SB 195.)

The 2010 amendment, effective May 20, 2010, in the introductory paragraph of subsection (a), substituted “an application” for “written application” in the middle and deleted “meets the following re-

quirements” following “applicant” at the end; substituted “subsection” for “Code section” at the end of the first sentence of paragraph (a)(3); and inserted “or she” in the middle of subsection (b).

43-28-10. Examinations.

(a) A person applying for licensure shall demonstrate his eligibility in accordance with the requirements of Code Section 43-28-9 and shall make application for examination upon a form and in such a manner as the board shall prescribe. Such application shall be accompanied by the fee prescribed by the board. A person who fails an examination may

make reapplication for reexamination accompanied by the prescribed fee.

(b) Each applicant for licensure under this chapter shall be examined by the board in written examination to test his knowledge of the basic and clinical sciences relating to occupational therapy and occupational therapy theory and practice, including the applicant's professional skills and judgment in the utilization of occupational therapy techniques and methods and such other subjects as the board may deem useful to determine the applicant's fitness to practice. The board shall establish the standards for acceptable performance by the applicant.

(c) Examinations shall be given at least twice a year.

(d) Applicants may obtain their examination scores and may review their papers in accordance with such rules and regulations as the board may establish. (Ga. L. 1976, p. 993, § 13; Ga. L. 1991, p. 379, § 6.)

43-28-11. Waiver of examination; reciprocity.

The board may waive the examination and grant a license to any applicant who shall present proof of current licensure as an occupational therapist or an occupational therapy assistant in another state, the District of Columbia, or territory of the United States, which requires standards for licensure considered by the board to be equivalent to the requirements for licensure of this chapter. (Ga. L. 1976, p. 993, § 14; Ga. L. 1991, p. 379, § 7.)

Cross references. — Cooperation between Georgia and other states generally, T. 28, C. 6.

43-28-12. Issuance of license; fees; limited permits; use of titles and abbreviations.

(a) The board shall issue a license to any person who meets the requirements of this chapter upon payment of the license fee prescribed.

(b) The board shall issue a limited permit to persons who have completed the education and experience requirements of this chapter. This permit shall allow the person to practice occupational therapy under the supervision of an occupational therapist who holds a current license in this state and shall be valid until the date on which the results of the next qualifying examination have been made public. This limited permit shall not be renewed if the applicant has failed the examination.

(c) The board may issue a limited permit to persons who have successfully completed a certification examination approved by the

board. This permit shall allow the person to practice occupational therapy for a period not to exceed 90 days under the supervision of an occupational therapist who holds a current license in this state.

(d) Any person who is issued a license as an occupational therapist under the terms of this chapter may use the words "occupational therapist registered," "licensed occupational therapist," or "occupational therapist," or he may use the letters "O.T.R.," "L.O.T.," "O.T.," or "O.T.R./L." in connection with his name or place of business to denote registration under this chapter.

(e) Any person who is issued a license as an occupational therapy assistant under the terms of this chapter may use the words "occupational therapy assistant," "licensed occupational therapy assistant," or "certified occupational therapy assistant" or may use the letters "O.T.A.," "L.O.T.A.," "C.O.T.A.," or "C.O.T.A./L." in connection with his name or place of business. (Ga. L. 1976, p. 993, § 15; Ga. L. 1991, p. 379, § 8.)

RESEARCH REFERENCES

ALR. — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

43-28-13. Denial, refusal to renew, suspension, or revocation of licenses; probation; fines; reinstatement.

(a) The board shall, after notice and opportunity for hearing, have the power to deny or refuse to renew, suspend, or revoke the license of, or impose a fine or probationary conditions upon, any licensee who has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Such unprofessional conduct includes:

(1) Obtaining or attempting to obtain a license by fraud, misrepresentation, or concealment of material facts;

(2) Being guilty of unprofessional conduct as defined by the rules and regulations established by the board; or

(3) Being convicted of a crime other than minor offenses defined as "minor misdemeanors," "violations," or "offenses" in any court if the acts for which he was convicted are found by the board to have a direct bearing on whether he should be entrusted to serve the public in the capacity of an occupational therapist or occupational therapy assistant.

(b) Such denial, refusal to renew, suspension, revocation, or imposition of a fine or probationary conditions upon a licensee may be ordered

by the board in a decision made after a hearing in the manner provided by the rules and regulations adopted by the board. One year from the date of revocation of a license, application may be made to the board for reinstatement. The board shall have the discretion to accept or reject an application for reinstatement and may, but shall not be required to, hold a hearing to consider such reinstatement. (Ga. L. 1976, p. 993, § 16; Ga. L. 1991, p. 379, § 9.)

RESEARCH REFERENCES

ALR. — Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 ALR 1388.

43-28-14. Renewal or reinstatement of expired licenses; renewal of suspended licenses.

(a) All licenses shall expire biennially. Each person licensed under this chapter is responsible for renewing his license before the expiration date. Application for renewal shall be completed in the manner prescribed in the rules and regulations of the division director and shall include the payment of a renewal fee. The board may set and require a specific number of continuing education hours for license renewal.

(b) The board may provide for late renewal of a license upon payment of a late renewal fee, proof of continuing education as set by the board, and completion of an appropriate form. Any license which is not renewed during the specified renewal period will be revoked for failure to renew. The holder of such a canceled license may apply for and obtain a valid license only upon compliance with all relevant requirements for reinstatement.

(c) A suspended license is subject to expiration and may be renewed as provided in this Code section, but such renewal shall not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity or in other conduct or activity in violation of the order or judgment by which the license was suspended. If a license revoked on disciplinary grounds is reinstated, the licensee, as a condition of reinstatement, shall pay the renewal fee and any late fee that may be applicable. (Ga. L. 1976, p. 993, § 17; Ga. L. 1991, p. 379, § 10; Ga. L. 2000, p. 1706, § 19.)

43-28-15. Exceptions to operation of chapter.

Nothing in this chapter shall be construed as preventing or restricting the practice, services, or activities of:

(1) Any person licensed under any other law of the state, including but not limited to physicians, and persons working under the super-

vision of physicians, nurses, clinical psychologists, speech pathologists and audiologists, dentists, and physical therapists, from engaging in the profession or occupation for which he is licensed;

(2) Any person employed as an occupational therapist or an occupational therapy assistant by the government of the United States if such a person provides occupational therapy solely under the direction or control of the organization by which he is employed;

(3) Any person pursuing a course of study leading to a degree or certificate in occupational therapy in an educational program which is accredited by a recognized accrediting agency acceptable to the board and if such person is designated by a title which clearly indicates such person's status as a student or trainee;

(4) Any person fulfilling the supervised field work experience requirements of Code Section 43-28-9 if such activities and services constitute a part of the experience necessary to meet the requirement of that Code section;

(5) Any person enrolled in a course of study designed to develop advanced occupational therapy skills when the occupational therapy activities are required as part of an educational program sponsored by an educational institution approved by the board and conducted under the supervision of an occupational therapist licensed under this chapter. If such person provides occupational therapy services outside the scope of the educational program, he shall then be required to be licensed in accordance with this chapter;

(6) Any occupational therapist or occupational therapy assistant licensed or certified by an agency recognized by the board providing consultation, as defined by rule, related to direct patient care if such services are performed for not more than 30 days in a calendar year;

(7) Any person employed as an occupational therapy aide and working under the direct supervision of an occupational therapist licensed in this state; or

(8) Persons registered as rehabilitation suppliers by the Georgia Board of Workers' Compensation, including those registered before July 1, 1992, but only when practicing rehabilitation counseling as a designated principal rehabilitation supplier pursuant to Chapter 9 of Title 34 and only so long as they do not use any titles other than titles describing the certifications or licenses they are required to hold under Code Section 34-9-200.1. (Ga. L. 1976, p. 993, § 11; Ga. L. 1979, p. 1233, § 1; Ga. L. 1982, p. 2224, § 3; Ga. L. 1991, p. 379, § 11; Ga. L. 1993, p. 1042, §§ 3, 3.1.)

43-28-16. Penalty.

(a) Any person who violates this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not

less than \$250.00 and not more than \$1,000.00, or imprisonment for a period not exceeding six months, or both. A license held by any person convicted under this Code section shall be forfeited and revoked immediately for one year from the date of such conviction.

(b) It is unlawful for any person who is not registered under this chapter as an occupational therapist or as an occupational therapy assistant or whose registration has been suspended or revoked to use, in connection with his name or place of business, the words "occupational therapist," "licensed occupational therapist," "occupational therapist registered," "occupational therapy assistant," "licensed occupational therapy assistant," "certified occupational therapy assistant"; or the letters "O.T.," "L.O.T.," "O.T.R.," "O.T.A.," "L.O.T.A.," or "C.O.T.A."; or any other words, letters, abbreviations, or insignia indicating or implying that he is an occupational therapist or an occupational therapy assistant or to show in any way, orally, in writing, in print, or by sign, directly or by implication, or to represent himself as an occupational therapist or an occupational therapy assistant. (Ga. L. 1976, p. 993, § 19.)

Cross references. — False or fraudulent advertising, § 10-1-420 et seq.

43-28-17. Termination.

Repealed by Ga. L. 1992, p. 3137, § 23, effective July 1, 1992.

Editor's notes. — This Code section was based on Ga. L. 1982, p. 2224, §§ 1, 4; Ga. L. 1983, p. 3, § 32; and Ga. L. 1988, p. 1518, § 2.

CHAPTER 29

DISPENSING OPTICIANS

Sec.		Sec.	
43-29-1.	Purpose of chapter.		ment; waiver; effect of failure to complete required course hours.
43-29-2.	Definitions.	43-29-12.	Refusal or revocation of certificates of registration.
43-29-3.	Creation of board; members; election of officers; meetings; powers and duties.	43-29-13.	Appeal from decisions of board.
43-29-4.	(Effective until January 1, 2013. See note.) Board records and seal.	43-29-14.	Duties when dispensing contact lenses; restrictions; qualified dispensing optician as engaging in lawful trade or occupation.
43-29-4.	(Effective January 1, 2013. See note.) Board records and seal.	43-29-15.	Advertising.
43-29-5.	Jurisdiction of board.	43-29-16.	Splitting fees or costs.
43-29-6.	Rules and regulations; violation as grounds for revocation of license.	43-29-17.	Sale of nonprescription glasses; manufacture and sale of artificial eyes.
43-29-7.	License requirement; qualifications of applicants; subjects to be tested on examination; issuance and display of license.	43-29-18.	Construction of chapter.
43-29-8.	Examination; effect of failure of two examinations.	43-29-19.	Payment of fees in advance; restriction on paying out funds and creating expenses.
43-29-9.	Reciprocity.	43-29-20.	Unlicensed practice as public nuisance; injunctions.
43-29-10.	Registration; fee; reinstatement.	43-29-21.	Penalty.
43-29-11.	Continuing education require-	43-29-22.	Termination [Repealed].

Administrative rules and regulations. — Organization, Official Compilation of the Rules and Regulations of the

State of Georgia, Georgia State Board of Dispensing Opticians, Chapter 420-1.

JUDICIAL DECISIONS

Drugstore was not engaged in the unlicensed practice of dispensing opticianry, when the drugstore took a customer's order for a contact lens together with a prescription from an optometrist or physician licensed in Georgia, forwarded the prescription and order to

the drugstore's contact lens supplier in Ohio, received the lens from the supplier in a sealed container, and delivered the sealed container to the customer. Georgia State Bd. of Dispensing Opticians v. Dunaway Drug Stores, Inc., 259 Ga. 194, 378 S.E.2d 116 (1989).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d,

Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and De-

pendencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public

Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

43-29-1. Purpose of chapter.

This chapter is enacted in the exercise of the police powers of the state. Its purposes generally are to protect the public health, welfare, and safety by providing for the regulation of the sale, dispensing, and supplying of all ophthalmic appliances, eyeglasses, and all aids to human vision. (Ga. L. 1956, p. 148, § 1.)

Cross references. — Regulation of use of flammable materials in eyeglass frames, § 31-1-2.

JUDICIAL DECISIONS

Cited in *Crawley v. Seignious*, 213 Ga. 810, 102 S.E.2d 38 (1958).

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons and Other Healers, §§ 8, 37 et seq.

C.J.S. — 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers, §§ 1 et seq., 22, 23.

43-29-2. Definitions.

As used in this chapter, the term:

(1) "Board" means the State Board of Dispensing Opticians.

(2) "Dispensing optician" means, subject to Code Section 43-29-18, an individual who is duly licensed to prepare and dispense lenses, spectacles, eyeglasses, contact lenses, and optical devices to the intended user thereof as specifically directed or authorized on the written prescription of a physician skilled in diseases of the eye or an optometrist duly licensed to practice his profession. (Ga. L. 1956, p. 148, § 2; Ga. L. 1981, p. 1378, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Restrictions on eye care and treatment performed by physicians, optometrists, and opticians. — Physician licensed in this state is unrestricted in the eye care and treatment afforded the physician's patients, including the fabrication and use of contact lenses, medicine, drugs, and surgery. An optometrist may employ

any means, except drugs, medicine, or surgery, in the treatment of the human eye, including contact lenses. A dispensing optician may prepare and dispense optical devices upon the prescription of a physician or optometrist, or may duplicate lenses without a prescription. 1980 Op. Att'y Gen. No. 80-19.

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 8.
C.J.S. — 70 C.J.S., Physicians, Sur-

geons, and Other Health-Care Providers, § 9.

43-29-3. Creation of board; members; election of officers; meetings; powers and duties.

(a) There is created the State Board of Dispensing Opticians, which board shall supervise the practice of dispensing opticians and enforce this chapter, which board shall be composed of five licensed dispensing opticians, each of whom shall be a resident of the state who has been engaged in the occupation of dispensing optician in the state for not less than five years preceding the time of his appointment, and one additional member who shall have no connection whatsoever with the trade or occupation of dispensing optician.

(b) The members of the board shall be appointed by the Governor, and each such appointee shall hold office for a period of four years or until his successor is appointed and qualified.

(c) The Governor is also authorized to fill vacancies that may occur from time to time on said board with persons duly qualified.

(d) The board shall select from among its own number a chairman and a vice-chairman, shall adopt rules and regulations governing the examination of applicants and the enforcement of this chapter, and shall establish a code of ethics and standards of practice for dispensing opticians and such other rules and regulations governing procedure as shall be necessary and proper for the carrying out of the objectives of this chapter.

(e) The board shall provide for meetings at least twice each year for the purpose of receiving applications and giving examinations as above provided and may meet at other times and at such places as the board shall designate from time to time or fix by regulations.

(f) The board may administer oaths, summon witnesses, and take testimony in all matters relating to its duties.

(g) The board shall issue a license to practice the trade or occupation of dispensing optician to all persons who shall furnish satisfactory evidence of attainments and qualifications under this chapter and the rules and regulations of the board. Such license shall be signed by the chairman and attested by the division director, and it shall give the person to whom it is issued the absolute authority to practice the trade or occupation of dispensing optician in this state.

(h) Each member of the board shall be reimbursed as provided in subsection (f) of Code Section 43-1-2. (Ga. L. 1956, p. 148, § 5; Ga. L. 1978, p. 1960, § 1; Ga. L. 1980, p. 1101, § 2; Ga. L. 2000, p. 1706, § 19.)

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Conflict of interest. — There is no conflict of interest when a member of the State Board of Dispensing Opticians is also a Medicaid provider. 1982 Op. Att'y Gen. No. 82-97.

43-29-4. (Effective until January 1, 2013. See note.) Board records and seal.

(a) The board shall have an official seal and shall keep a record of its proceedings and a register of persons whose licenses have been revoked.

(b) The records of the board shall be open to public inspection, and it shall keep on file all examination papers for a period of 90 days after each examination. A transcript of an entry in such records, certified by the division director under the seal of the board, shall be evidence of the facts stated therein. (Ga. L. 1956, p. 148, § 6; Ga. L. 2000, p. 1706, § 19.)

Cross references. — Inspection of public records generally, § 50-18-70 et seq. 43-29-4 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

Editor's notes. — Code Section

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, §§ 1, 2. **C.J.S.** — 76 C.J.S., Records, § 1 et seq.

43-29-4. (Effective January 1, 2013. See note.) Board records and seal.

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each examination. (Ga. L. 1956, p. 148, § 6; Ga. L. 2000, p. 1706, § 19; Ga. L. 2011, p. 99, § 71/HB 24.)

The 2011 amendment, effective January 1, 2013, deleted the former second sentence of subsection (b) which read: “A transcript of an entry in such records, certified by the division director under the seal of the board, shall be evidence of the facts stated therein.” See editor’s note for applicability.

Editor’s notes. — Code Section

43-29-4 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

Ga. L. 2011, p. 99, § 101, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

43-29-5. Jurisdiction of board.

The board shall have exclusive jurisdiction in the enforcement of this chapter over all persons engaged in business as dispensing opticians, whether licensed or unlicensed, provided that nothing contained in this chapter shall be construed as limiting or abrogating the power or authority of any board or commission created under any of the laws of this state defining and regulating any profession to enforce such respective laws or exercising any of the powers contained in such laws against violators thereof, even though engaged in the business of dispensing optician. (Ga. L. 1956, p. 148, § 2.)

43-29-6. Rules and regulations; violation as grounds for revocation of license.

The board is authorized to adopt rules and regulations pursuant to this chapter for the carrying out of the purposes of this chapter. The violation of such rules and regulations shall be grounds for the revocation of any license issued under this chapter. (Ga. L. 1980, p. 1101, § 8.)

Administrative rules and regulations. — Rules and regulations governing dispensing opticians, Official Compilation of the Rules and Regulations of the State

of Georgia, Rules of Georgia State Board of Dispensing Opticians, Chapter 420-1 et seq.

43-29-7. License requirement; qualifications of applicants; subjects to be tested on examination; issuance and display of license.

(a) Any person wishing to obtain the right to practice the trade or occupation of dispensing optician, as defined in this chapter, shall, before it shall be lawful for him or her to do so in this state, make application to the board, upon such form and in such manner as shall be adopted and prescribed by the board, and obtain a license from the board. Unless such person shall have obtained a license as provided in

this subsection, it shall be unlawful for him or her to practice the trade or occupation of dispensing optician in this state; and he or she shall be subject to the penalties prescribed in Code Section 43-29-21.

(b) The board shall admit to examination any candidate who pays the fee provided for in this chapter and submits evidence satisfactory to the board, verified on oath, that:

(1) The applicant is over 18 years of age;

(2) The applicant has completed a high school education or its equivalent, as defined by the State Board of Education;

(3) The applicant is of good moral character; and

(4) The applicant has satisfactorily completed one school year of not less than an 850 hour course of study in a recognized school of optical dispensing or has had practical training and experience of a grade and character satisfactory to the board for not less than two years under the supervision of a licensed dispensing optician, a licensed physician, or a licensed optometrist, provided that any time spent in a recognized school shall be considered as part of the apprenticeship period. The practical training and experience required under this paragraph for an apprenticeship shall include, at a minimum, 3,000 hours of experience engaged in apprenticeship functions and shall include instruction in ophthalmic optics, optical laboratory materials and techniques, eye anatomy and physiology, related laws and regulations, ophthalmic dispensing theory and application, and basic contact lens theory. Prior to beginning an apprenticeship, the applicant shall register with the board. The registration shall identify the supervising licensed physician, licensed optometrist, or licensed dispensing optician and the mailing address and telephone number of the primary location where the apprenticeship training shall occur; provided, however, that in addition to the primary location, such training may be furnished at other locations under proper supervision. The board shall develop a list of textbooks and instructional materials to guide the apprentice and supervisors in providing the appropriate apprenticeship instruction. Upon completion by the applicant, such training and experience shall be certified by the supervising licensed dispensing optician, licensed physician, or licensed optometrist to the board.

(c) Applicants who have received practical training and experience in the trade or occupation of dispensing optician prior to July 1, 2008, shall receive credit toward the practical training and experience requirements of paragraph (4) of subsection (b) of this Code section if they register with the board in accordance with the provisions of said paragraph no later than August 31, 2008.

(d) Applicants may also meet the educational requirements of this Code section by receiving a certificate from recognized schools of

opticianry with the Technical College System of Georgia or formal home study programs through the Career Progression Program with the National Academy of Opticianry or other programs approved by the board.

(e) Applicants for examination may be examined upon matters pertaining to mathematics and physics, ophthalmic materials and laboratory technique, ophthalmic optics, ophthalmic dispensing, and practical subjects. When any applicant passes the necessary examination and meets the qualifications set out, the board shall issue a license to such person to practice the trade or occupation of dispensing optician.

(f) Such license shall be conspicuously displayed in the office or place of business of the dispensing optician; and it shall not be necessary to remove the same so long as such dispensing optician continues to practice his or her trade or occupation in this state and so long as the license is not revoked or suspended by the board. (Ga. L. 1956, p. 148, § 3; Ga. L. 1982, p. 3, § 43; Ga. L. 1984, p. 513, § 1; Ga. L. 2008, p. 123, § 1/HB 241; Ga. L. 2010, p. 266, § 32/SB 195.)

The 2010 amendment, effective May 20, 2010, deleted “by the board” following “may be examined” in the first sentence of subsection (e).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, in paragraph (b)(4), a comma was inserted following “licensed physician” in the last sentence, and, in subsection (d), “Technical

College System of Georgia” was substituted for “Georgia Department of Technical and Adult Education”.

Administrative rules and regulations. — Licenses, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Dispensing Opticians, Chapter 420-5.

RESEARCH REFERENCES

ALR. — Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

43-29-8. Examination; effect of failure of two examinations.

(a) An applicant applying for a license to practice the trade or occupation of dispensing optician shall be required to pass a board approved examination.

(b) Failure to pass a satisfactory examination shall not prevent any applicant from participating in subsequent examinations upon complying with this chapter, but any applicant who has failed two examinations shall not be permitted to take any further examination for licensure under this chapter until such applicant has furnished sufficient proof of having taken such additional education and training as shall be required by the board. (Ga. L. 1956, p. 148, § 4; Ga. L. 1980, p. 1101, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2010, p. 266, § 33/SB 195.)

The 2010 amendment, effective May 20, 2010, substituted the present provisions of subsection (a) for the former provisions, which read: "Examination of applicants for license to practice the trade or occupation of dispensing optician shall be made by the board according to the methods and covering subject matter deemed by the board to be the most practical and expeditious to test the applicant's specific job performance requirements. Such ex-

aminations shall be written."; deleted former subsection (b), which read: "There shall be paid to the division director by each applicant for a license an examination fee in an amount determined by the board, which fee shall accompany the application for examination."; redesignated former subsection (c) as present subsection (b); and deleted "before the board" following "subsequent examinations" near the middle of present subsection (b).

43-29-9. Reciprocity.

Any person who has been duly licensed to practice as a dispensing optician in any state of the United States which has a standard of qualifications and examination for such practice at least as high as that provided for in this state by this chapter and who has been principally engaged in such practice pursuant to such license for a period of not less than two years preceding may, upon proper application to the board and upon payment of a fee in an amount established by the board in lieu of examination and registration fees, be issued a certificate of registration without examination and shall thereupon be authorized to practice as a registered dispensing optician in this state subject to this chapter and the rules and regulations of the board, provided that the state of residence of a dispensing optician seeking registration under this Code section accords a similar privilege to dispensing opticians licensed by Georgia and seeking to practice as dispensing opticians in such other state; provided, further, that an applicant for registration under this Code section shall not, within the five years preceding his application, have failed any examination which is required in this state. (Ga. L. 1956, p. 148, § 9; Ga. L. 1980, p. 1101, § 3.)

Administrative rules and regulations. — Registration requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Dispensing Opticians, Chapter 420-2.

Cross references. — Cooperation between Georgia and other states generally, T. 28, C. 6.

43-29-10. Registration; fee; reinstatement.

All persons practicing as dispensing opticians shall register with the division director and shall pay a biennial registration fee in an amount determined by the board, on or before the renewal date established by the division director. Failure to register and pay this fee shall forfeit the certificate of such delinquent, but he may be reinstated by paying all registration dues and an additional penalty fee in an amount estab-

lished by the board. (Ga. L. 1956, p. 148, § 11; Ga. L. 1980, p. 1101, § 4; Ga. L. 2000, p. 1706, § 19.)

43-29-11. Continuing education requirement; waiver; effect of failure to complete required course hours.

(a) Each person who holds a license as a dispensing optician shall be required to complete ten hours of continuing education prior to each renewal of such license.

(b) With his or her application for license renewal, each licensed dispensing optician shall submit an affidavit of course hours completed as proof that his or her education requirements have been satisfied. The board shall give credit for any course given by any recognized national, regional, or state dispensing society or association if such course increases the education of a dispensing optician and is made available to all licensed opticians on a reasonably nondiscriminatory fee basis. The board may also approve, in accordance with the objectives of this chapter, other courses held within or outside of this state which are available to all persons on a reasonably nondiscriminatory fee basis. Any group of ten or more licensed opticians may arrange for an educational course and request board approval thereof. Any such request shall be made at least 90 days prior to the proposed date of the course and shall include full details as to the contents of the course, the instructors, and the charge to be made for attendance, as well as any other information which the board may require. The board shall endeavor to act upon any request for approval at least 45 days prior to the proposed date therefor and shall thereupon notify all licensed opticians of the time, place, contents, and charges for any such approved course. The certificate of attendance required under this Code section shall be issued to the optician upon completion of the approved course. Credit shall be allowed on the basis of an hour for an hour. To receive one hour of credit, one must attend one full hour. No fractional hour credits shall be allowed.

(c) The board may waive the requirements of this Code section for any license period for any dispensing optician upon proof of such optician's hardship or disability, provided that such optician's license may be revoked upon failure of the licensee to complete the required number of hours, not to exceed 20 hours, of continuing education within 12 months immediately following renewal.

(d) A dispensing optician failing to complete the course hours required under this Code section shall have his or her license restored upon proof of subsequent completion of required course hours and, except in the case of a waiver granted under subsection (c) of this Code section, upon payment of a penalty fee in an amount established by the

board. (Ga. L. 1976, p. 279, § 1; Ga. L. 1980, p. 1101, § 6; Ga. L. 1981, p. 1378, § 2; Ga. L. 1984, p. 513, §§ 2, 3; Ga. L. 2010, p. 266, § 34/SB 195.)

The 2010 amendment, effective May 20, 2010, in subsection (b), in the first sentence, inserted “or her” twice and substituted “shall submit an affidavit of” for “must submit a certificate or certificates of attendance for”, substituted “Code section” for “chapter” in the seventh sentence, and substituted “shall” for “will” in the eighth sentence and in the last sen-

tence; and inserted “or her” in the middle of subsection (d).

Administrative rules and regulations. — Continuing education, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Dispensing Opticians, Chapter 420-9.

43-29-12. Refusal or revocation of certificates of registration.

The board shall refuse to issue its certificate of registration and may revoke its certificate of registration issued to any person who is not of good moral character, who commits an act involving moral turpitude, who is guilty of highly unprofessional conduct, or whose certificate was issued through error, fraud, or perjury, provided that in all such cases the board shall serve written notice of the charges on such accused person at least ten days prior to the date set for hearing, and such person shall be notified to appear before the board to answer the charges at such time and place as the board may direct. Such notice shall plainly set forth the charges made and shall notify the accused person to appear to answer the same. On such hearing, if the charges are found true, the accused having the right to produce witnesses in his behalf and cross-examine those testifying against him, the board shall render judgment against him. (Ga. L. 1956, p. 148, § 15.)

RESEARCH REFERENCES

ALR. — Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 ALR 1388.

43-29-13. Appeal from decisions of board.

Any person whose license has been revoked or suspended by the board may appeal to the superior court of the county of domicile of the board for a trial de novo by filing with the clerk a certified copy of the charge heard by the board and his petition requesting a trial. Upon demand by the applicant, the board shall make certified copies of any charges. When the copy of the charge is lodged with the clerk of the superior court of the county of domicile of the board and the required deposit of court cost is paid within ten days after the board's findings, the appeal shall be considered perfected and shall be docketed and stand for trial. No such appeal shall operate as a supersedeas to such

revocation or suspension. (Ga. L. 1956, p. 148, § 16; Ga. L. 2000, p. 1706, § 18.)

43-29-14. Duties when dispensing contact lenses; restrictions; qualified dispensing optician as engaging in lawful trade or occupation.

(a) Dispensing opticians who dispense contact lenses shall instruct the wearer at the time the lenses are delivered to return to the prescribing and responsible optometrist or physician skilled in diseases of the eye for evaluation, approval, and follow-up care.

(b) A dispensing optician may duplicate lenses without prescription, provided that a dispensing optician shall not substitute contact lenses for spectacles, eyeglasses, or other optical devices except as otherwise authorized in this chapter or engage in the diagnosis of diseases of the human eye or attempt to determine the refractive powers of the human eye or in any manner attempt to prescribe remedies for or treat diseases or ailments of human beings.

(c) A dispensing optician who qualifies under this chapter shall be determined and recognized as engaging in a lawful trade or occupation in this state. (Ga. L. 1956, p. 148, § 2; Ga. L. 1981, p. 1378, § 1.)

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Restrictions on eye care and treatment performed by physicians, optometrists, and opticians. — Physician licensed in this state is unrestricted in the eye care and treatment afforded the physician's patients, including the fabrication and use of contact lenses, medicine, drugs, and surgery. An optometrist may employ any means, except drugs, medicine, or surgery, in the treatment of the human eye, including contact lenses. A dispensing optician may prepare and dispense optical devices upon the prescription of a physician or optometrist, or may duplicate lenses without a prescription. 1980 Op. Att'y Gen. No. 80-19.

Dispensing optician may not examine a patient's eyes for the purpose of

determining whether or not the patient may wear contact lenses. However, the duplication of a contact lens from an original contact lens, without examination, is not prohibited. 1980 Op. Att'y Gen. No. 80-19.

Optician may not duplicate contact lens from spectacle lens. — Authority vested in a dispensing optician to duplicate a lens is an exception to the general statutory scheme providing for preparation and dispensing of optical devices upon a prescription. Exceptions must be strictly construed; thus, a dispensing optician may duplicate a spectacle lens from another such lens, but may not duplicate a contact lens from a spectacle lens. 1980 Op. Att'y Gen. No. 80-19.

43-29-15. Advertising.

It shall be lawful for a dispensing optician to advertise, provided that such dispensing optician does not advertise in any manner that would tend to mislead or deceive the public or that would in any manner discredit others in the eye care field. (Ga. L. 1956, p. 148, § 7.)

Cross references. — False or fraudulent advertising, § 10-1-420 et seq.

43-29-16. Splitting fees or costs.

It shall be unlawful for any dispensing optician, either directly or indirectly, to participate in any manner in the division, assignment, rebate, splitting, or refunding of service fees or costs of completed eyeglasses or parts thereof with a physician, optometrist, or other person or persons. (Ga. L. 1956, p. 148, § 7.)

RESEARCH REFERENCES

ALR. — Practices forbidden by state deceptive trade practice and consumer protection acts, 89 ALR3d 449.

43-29-17. Sale of nonprescription glasses; manufacture and sale of artificial eyes.

Nothing in this chapter shall be construed to prevent the sale of spectacles for reading purposes, toy glasses, goggles, or sunglasses consisting of plano white, plano colored, or plano tinted glasses or ready-made nonprescription glasses; nor shall anything in this chapter be construed to affect in any way the manufacturing and sale of plastic or glass artificial eyes or any persons engaged in the manufacturing or sale of plastic or glass artificial eyes. (Ga. L. 1956, p. 148, § 10.)

43-29-18. Construction of chapter.

(a) Nothing in this chapter shall be construed to authorize or permit any person to hold himself out as being able, or to offer, undertake, or attempt, by any means or method, to examine eyes or to diagnose, treat, correct, relieve, operate, or prescribe for any human ailment, deficiency, deformity, disease, injury, pain, or physical condition.

(b) Nothing in this chapter shall be construed to limit or restrict, in any respect, the practice of medicine by duly licensed physicians authorized to practice under Article 2 of Chapter 34 of this title or the practice of optometry by duly licensed optometrists authorized to practice under Chapter 30 of this title. Nothing in this chapter shall be construed to limit or restrict a duly licensed physician or optometrist from the practices enumerated and defined in this chapter; and such licensed physician or optometrist shall have all the rights and privileges which may accrue under this chapter to dispensing opticians licensed under this chapter.

(c) Nothing in this chapter shall be construed to impede, limit, prevent, or restrict the furnishing, selling, or supplying of any commod-

ities or services by any manufacturer, wholesaler, jobber, vendor, or distributor of any commodities or services to any manufacturer, wholesaler, jobber, vendor, or distributor thereof or to or as agent for any physician, optometrist, or dispensing optician or to any clinic, infirmary, or hospital or to any school, college, or university.

(d) Nothing in this chapter shall be construed to prohibit an unlicensed person from performing merely mechanical work upon inert materials in an optical office or laboratory.

(e) The services and appliances relating to optical dispensing shall be dispensed, furnished, or supplied to the intended wearer or user thereof only upon prescription issued by a physician or an optometrist; but duplications, replacements, reproductions, or repetitions may be done without prescription, in which event any such act shall be construed to be optical dispensing the same as if performed on the basis of an original written prescription.

(f) Nothing contained in this chapter shall be construed to require an employee of a licensed physician or a licensed optometrist to secure a license under this chapter or be otherwise subject to this chapter, so long as such employee is working exclusively for and under the direct supervision of such licensed physician or optometrist or licensed optician and does not hold himself out to the public generally as a dispensing optician. (Ga. L. 1956, p. 148, §§ 8, 14; Ga. L. 1992, p. 6, § 43; Ga. L. 1994, p. 97, § 43; Ga. L. 1999, p. 81, § 43.)

OPINIONS OF THE ATTORNEY GENERAL

Board cannot establish rules and regulations regarding one's outside activities. — State Board of Dispensing Opticians does not have authority to establish rules and regulations, with reference to a person's outside activities, and thus refuse to issue a license to one otherwise qualified under the law. 1954-56 Op. Att'y Gen. p. 549 (see O.C.G.A. § 43-29-18).

Restrictions on eye care and treatment performed by physicians, optometrists, and opticians. — Physician licensed in this state is unrestricted in the eye care and treatment afforded the physician's patients, including the fabrication and use of contact lenses, medicine, drugs, and surgery. An optometrist may employ any means, except drugs, medicine, or surgery, in the treatment of the human eye, including contact lenses. A dispensing optician may prepare and dispense optical devices upon the prescription of a physi-

cian or optometrist, or may duplicate lenses without a prescription. 1980 Op. Att'y Gen. No. 80-19.

Dispensing optician may not examine a patient's eyes for the purpose of determining whether or not the patient may wear contact lenses. However, the duplication of a contact lens from an original contact lens, without examination, is not prohibited. 1980 Op. Att'y Gen. No. 80-19.

Optician may not duplicate contact lens from spectacle lens. — Authority vested in a dispensing optician to duplicate a lens is an exception to the general statutory scheme providing for preparation and dispensing of optical devices upon a prescription. Exceptions must be strictly construed; thus, a dispensing optician may duplicate a spectacle lens from another such lens, but may not duplicate a contact lens from a spectacle lens. 1980 Op. Att'y Gen. No. 80-19.

Requirements for license without examination. — If a person were engaged in trade of a dispensing optician at time of passage of this statute, and made application on prescribed forms, within time limit, and paid the fee, the person would be entitled to receive a license without examination under provisions of the law. 1954-56 Op. Att'y Gen. p. 549 (see O.C.G.A. § 43-29-18).

Board must return fee when rejecting grandfathered license application. — When the State Board of Dispensing Opticians receives an application for a license under "grandfather clause" of Ga. L. 1956, p. 148 creating the board, the fee received therewith must be refunded if the application is rejected. 1954-56 Op. Att'y Gen. p. 547.

RESEARCH REFERENCES

ALR. — Construction of "grandfather clause" of statute or ordinance regulating or licensing business or occupation, 4 ALR2d 667.

Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

43-29-19. Payment of fees in advance; restriction on paying out funds and creating expenses.

All fees provided for in this chapter shall be paid in advance to the division director. No funds shall be paid out unless authorized by the chairman of the board and the division director, and no expense shall be created in excess of the fees provided in this chapter. (Ga. L. 1956, p. 148, § 12; Ga. L. 1980, p. 1101, § 7; Ga. L. 2000, p. 1706, § 19.)

43-29-20. Unlicensed practice as public nuisance; injunctions.

The practice of the profession of dispensing optician is declared to involve activities affecting the public interest and involving the health and safety and welfare of the public. Such activities, when engaged in by a person who is not licensed, are declared to be a public nuisance and harmful to the public health, safety, and welfare. The board or the appropriate prosecuting attorney where such nuisance exists may bring an action to restrain and enjoin such unlicensed practice in the superior court of the county where such unlicensed person resides. It shall not be necessary in order to obtain the equitable relief provided in this Code section to allege or prove that there is no adequate remedy at law. (Ga. L. 1980, p. 1101, § 8.)

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Injunctions, § 145.

C.J.S. — 43A C.J.S., Injunctions,

§ 135. 66 C.J.S., Nuisances, §§ 7 et seq., 15, 65, 68, 71, 74, 86, 89, 91, 92, 103, 104.

43-29-21. Penalty.

Any person who shall practice the trade or occupation of dispensing optician, as defined in this chapter, without first complying with this chapter or who shall violate any of the Code sections of this chapter shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$500.00 or by imprisonment of not more than six months in the county jail, or both. (Ga. L. 1956, p. 148, § 13; Ga. L. 1982, p. 3, § 43.)

43-29-22. Termination.

Repealed by Ga. L. 1992, p. 3137, § 24, effective July 1, 1992.

Editor's notes. — This Code section amended by Ga. L. 1984, p. 513, § 4 and was part of the original Code enactment Ga. L. 1990, p. 284, § 1. (Ga. L. 1981, Ex. Sess., p. 8) and was

CHAPTER 30

OPTOMETRISTS

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| <p>Sec.</p> <p>43-30-1. Definitions.</p> <p>43-30-2. Creation of board; composition; qualifications of members.</p> <p>43-30-3. Terms of office for board members; vacancies.</p> <p>43-30-4. Election of board officers; rules, regulations, and bylaws as to board's proceedings; meetings.</p> <p>43-30-5. Adoption of rules and regulations by board generally; restrictions on practice locations for doctors of optometry.</p> <p>43-30-5.1. Advertising requirements.</p> <p>43-30-6. Certificate of registration required.</p> <p>43-30-6.1. Display of license or certificate of registration.</p> <p>43-30-7. Certification and registration</p> | <p>Sec.</p> <p>requirement; comity; qualifications examination.</p> <p>43-30-8. Biennial registration; educational programs for optometrists; forfeiture of certificate upon failure to comply; reinstatement of certificate.</p> <p>43-30-9. Refusal or revocation of certificates; appeals.</p> <p>43-30-10. Appeal from board decisions.</p> <p>43-30-11. Agency representative to determine contested cases; judicial review.</p> <p>43-30-12. Unlicensed practice as constituting a nuisance; injunction.</p> <p>43-30-13. Construction of chapter.</p> <p>43-30-14. Practicing optometry without a license.</p> <p>43-30-15. Termination [Repealed].</p> |
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Cross references. — Professional corporations generally, T. 14, C. 7. Patient access to eye care, T. 31, C. 1, A. 2. Discrimination against licensed optometrists by state agencies or public officials in suggestions or recommendations for visual care, § 45-11-9.

Administrative rules and regulations. — Organization, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Examiners in Optometry, Chapter 430-1.

JUDICIAL DECISIONS

Cited in *Mabry v. State Bd. of Exmrs. in Optometry*, 190 Ga. 751, 10 S.E.2d 740 (1940).

OPINIONS OF THE ATTORNEY GENERAL

Board may not require licensed optometrist to join State Association of Optometrists. 1945-47 Op. Att'y Gen. p. 508.

Board may not prescribe equipment nor personnel to be employed by practicing optometrists. 1945-47 Op. Att'y Gen. p. 502.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A

Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am.

Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

Am. Jur. Trials. — Laser Eye Surgery Litigation, 88 Am. Jur. Trials 265.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

Constitutionality of statutes and validity of regulations relating to optometry, 98 ALR 905; 22 ALR2d 939.

Right of corporation, or individual not himself licensed, to practice optometry through licensed employee, 102 ALR 343; 128 ALR 585.

What constitutes practice of "optometry", 88 ALR2d 1290; 77 ALR3d 817.

Liability of optometrist or optician for malpractice, 51 ALR3d 1273.

Medical malpractice: when limitations period begins to run on claim for optometrist's malpractice, 70 ALR4th 600.

What constitutes practice of "optometry", 82 ALR4th 816.

43-30-1. Definitions.

As used in this chapter, the term:

(1) "Board" means the State Board of Optometry.

(2)(A) "Optometry" means the art and science of visual care and is declared to be a learned profession. The practice of optometry consists of the diagnosis and interpretation of the visual behavior of the human organism by the employment of any means other than surgery. The practice of optometry further consists of the correction of visual anomalies through the prescribing, employment, and use of lenses, prisms, frames, mountings, contact lenses, orthoptic exercises, and visual training, light frequencies, and any other means or methods for the relief, correction, or remedy of any insufficiencies or abnormal conditions of the human visual organism, other than surgery. Optometrists are prohibited from using nondiagnostic lasers. Nothing in this chapter shall prohibit the use, administration, or prescription of pharmaceutical agents for diagnostic purposes and treatment of ocular disease in the practice of optometry by optometrists who have received pharmacological training and certification from a properly accredited institution of higher learning and who are certified by the board to use pharmaceutical agents for diagnostic and treatment purposes. Only a doctor of optometry who:

(i) Is already certified for using pharmaceutical agents for diagnostic purposes;

(ii) Has passed or passes an examination approved by the board which tests knowledge of pharmacology for treatment and management of ocular diseases;

(iii) Is certified in coronary pulmonary resuscitation (CPR); and

(iv) Maintains at least \$1 million in malpractice insurance coverage

shall be certified to use pharmaceutical agents for treatment purposes.

(B) The board shall establish by rule a list, which may be modified from time to time, of pharmaceutical agents which optometrists shall be allowed to use for treatment purposes.

(C) A doctor of optometry shall not administer any pharmaceutical agent by injection.

(D) Pharmaceutical agents which are used by a doctor of optometry for treatment purposes and administered orally may only be:

(i)(I) Nonnarcotic oral analgesics and Schedule III or Schedule IV controlled substances which are oral analgesics;

(II) Used for ocular pain; and

(III) Used for no more than 72 hours without consultation with the patient's physician; or

(ii) Oral and topical antibiotics, antivirals, topical steroids, antifungals, antihistamines, or antiglaucoma agents related to the diagnosis or treatment of diseases and conditions of the eye and adnexa oculi except Schedule I or Schedule II controlled substances. Doctors of optometry using such oral and topical pharmaceutical agents shall be held to the same standard of care imposed by Code Section 51-1-27 as would be applied to a physician licensed under Chapter 34 of this title performing similar acts; provided, however, that a doctor of optometry shall not be authorized to treat systemic diseases.

(E) Pharmaceutical agents which are used by a doctor of optometry for treatment purposes and administered topically shall be subject to the following conditions only when used for the treatment of glaucoma:

(i) If the pharmaceutical agent is a beta blocker, an optometrist certified to use pharmaceutical agents for treatment purposes must take a complete case history and determine whether the patient has had a physical examination within the past year. If the patient has not had such a physical examination or if the

patient has any history of congestive heart failure, bradycardia, heart block, asthma, or chronic obstructive pulmonary disease, that patient must be referred to a person licensed under Chapter 34 of this title for examination prior to initiating beta blocker therapy;

(ii) If the glaucoma patient does not respond to the topically administered pharmaceutical agents after 60 days of treatment, that patient must be referred to an ophthalmologist; and

(iii) If the patient is diagnosed as having closed angle glaucoma, the patient shall be immediately referred to an ophthalmologist.

(F) Doctors of optometry using pharmaceutical agents for treatment purposes shall be held to the same standard of care imposed by Code Section 51-1-27 as would be applied to a physician licensed under Chapter 34 of this title performing similar acts.

(G) Any doctor of optometry who uses a pharmaceutical agent, except under the conditions specified therefor by this chapter and any other law, shall be guilty of a misdemeanor unless a greater penalty is otherwise provided by law.

(H) Nothing in this chapter shall be construed to allow a doctor of optometry to dispense pharmaceutical agents to patients. (Ga. L. 1916, p. 83, § 1; Code 1933, § 84-1101; Ga. L. 1956, p. 94, § 1; Ga. L. 1980, p. 47, § 1; Ga. L. 1988, p. 34, § 1; Ga. L. 1994, p. 853, § 1; Ga. L. 1994, p. 996, § 1; Ga. L. 1995, p. 351, § 1; Ga. L. 2007, p. 551, § 1/SB 17.)

Law reviews. — For comment on *Pearle Optical of Monroeville, Inc. v. Georgia State Bd. of Exmrs.*, 219 Ga. 364, 133

S.E.2d 374 (1963); 219 Ga. 856, 136 S.E.2d 371 (1964), see 16 Mercer L. Rev. 349 (1964).

JUDICIAL DECISIONS

Optometry is a learned profession because a valid statute of state declares it to be. The declaration is not a mere effort on the part of the General Assembly to establish a fact by legislative fiat; it is the province of the lawmaking body to adjudge the sufficiency of the factual foundation necessary to support the statutes the legislature enacts into law. *Pearle Optical of Monroeville, Inc. v. Georgia State Bd. of Exmrs. in Optometry*, 219 Ga. 364, 133 S.E.2d 374 (1963).

Learned professions involve close relation between practitioner and patient. — From description of practice con-

tained in the law relating thereto it is also evident that there is the close and confidential relationship between practitioner and patient that separates learned professions of the law from other pursuits or professions that may require great learning or scholarship, but are not classified as learned professions. *Pearle Optical of Monroeville, Inc. v. Georgia State Bd. of Exmrs. in Optometry*, 219 Ga. 364, 133 S.E.2d 374 (1963).

Relation between optometrist and patient is personal and confidential and subject to reasonable legislative regulation in common interest. *Pearle*

Optical of Monroeville, Inc. v. Georgia State Bd. of Exmrs. in Optometry, 219 Ga. 364, 133 S.E.2d 374 (1963).

Practice of optometry is subject to regulation to protect public against ignorance, incapacity, deception and fraud, equally with practice of ophthalmology and other learned professions, a category originally confined to theology, law, and medicine, but long since broadened in keeping with diffusion of scientific learning and need of specialized knowledge in functioning of the ever-expanding and complex society. *Pearle Optical of Monroeville, Inc. v. Georgia State Bd. of Exmrs. in Optometry*, 219 Ga. 364, 133 S.E.2d 374 (1963).

Working for optical concern interested in selling goods may create conflict of interest for optometrist. — It would seem that the public has as much need to be protected from quacks and charlatans in optometry as in dentistry or any other subdivision of medicine. One who consults an optometrist for ocular examination is entitled to same undivided loyalty that a patient should receive from a physician. Fact that optometrist is employee of an optical concern whose main interest is sale of optical goods tends to be a distracting influence which may adversely affect the optometrist's loyalty to the interests of patient. *Pearle Optical of Monroeville, Inc. v. Georgia State Bd. of Exmrs. in Optometry*, 219 Ga. 364, 133 S.E.2d 374 (1963).

Unlicensed corporation or individual cannot practice through licensed employee. — Absent express statutory authority, a corporation or individual not licensed to practice optometry cannot practice optometry through a licensed employee. *Lee Optical of Ga., Inc. v. Georgia State Bd. of Exmrs. in Optometry*, 220 Ga. 204, 138 S.E.2d 165 (1964).

Optometrist keeping supplies solely for use by patients not subject to local optical supplier tax. — Duly licensed optometrist, who keeps and furnishes optical supplies solely for use by own patients in connection with work as an optometrist and does not engage in separate business of selling them to public, is exempt from municipal tax imposed on dealers in optical supplies. *Tinley v. City Council*, 55 Ga. App. 153, 189 S.E. 413 (1937).

Applicability of limitation and repose statute to professional negligence action. — Statute setting limitation and repose for medical malpractice actions applied to alleged professional negligence by an optometrist. *Zechmann v. Thigpen*, 210 Ga. App. 726, 437 S.E.2d 475 (1993).

Cited in *Tinley v. City Council*, 55 Ga. App. 153, 189 S.E. 413 (1937); *Wall v. American Optometric Ass'n*, 379 F. Supp. 175 (N.D. Ga. 1974); *Fulton-DeKalb Hosp. Auth. v. Hadley*, 174 Ga. App. 503, 330 S.E.2d 432 (1985).

OPINIONS OF THE ATTORNEY GENERAL

Restrictions on eye care and treatment performed by physicians, optometrists, and opticians. — Physician licensed in this state is unrestricted in the eye care and treatment afforded the physician's patients, including the fabrication and use of contact lenses, medicine, drugs, and surgery. An optometrist may employ any means, except drugs, medicine, or surgery, in the treatment of the human eye, including contact lenses. A dispensing optician may prepare and dispense optical devices upon the prescription of a physi-

cian or optometrist, or may duplicate lenses without a prescription. 1980 Op. Att'y Gen. No. 80-19.

Definition of "optometry" embraces the practice of opticianary. 1952-53 Op. Att'y Gen. p. 160.

Fitting contact lenses is the practice of optometry. 1945-47 Op. Att'y Gen. p. 495.

Preliminary determination of a pathological condition of the eye is within the scope of a license to practice optometry. 1983 Op. Att'y Gen. No. 83-52.

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons and Other Healers, §§ 37 et seq., 58.

C.J.S. — 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers, §§ 1 et seq., 22, 23.

ALR. — What constitutes practice of “optometry”, 88 ALR2d 1290; 82 ALR4th 816.

Fitting of contact lenses as practice of optometry, 77 ALR3d 817.

43-30-2. Creation of board; composition; qualifications of members.

(a) It shall be the duty of the Governor to appoint a State Board of Optometry to consist of six members. This board shall be appointed by the Governor and styled the “State Board of Optometry.” All appointments to the board shall be subject to the confirmation of the Senate. One of the members shall be appointed from the public at large and shall have no connection whatsoever with the profession or practice of optometry. The remaining five members shall be persons who have been actively engaged in the practice of optometry in the state for five years immediately preceding such appointment, shall be registered as optometrists under this chapter, and shall be qualified to use pharmaceutical agents for diagnostic and treatment purposes as authorized under this chapter.

(b) No person shall be eligible for appointment to the board who is connected in any way with a school teaching optometry or who sells optical goods at wholesale. (Ga. L. 1916, p. 83, § 2; Code 1933, § 84-1102; Ga. L. 1980, p. 47, § 2; Ga. L. 1994, p. 853, § 2.)

JUDICIAL DECISIONS

Cited in *Wall v. American Optometric Ass’n*, 379 F. Supp. 175 (N.D. Ga. 1974).

OPINIONS OF THE ATTORNEY GENERAL

Purpose of Ga. L. 1916, p. 83 in creating the board and regulating and setting up standards for practitioners was to protect interest, health, and welfare of

public by precluding incompetent persons from engaging in the occupation. 1945-47 Op. Att’y Gen. p. 496.

RESEARCH REFERENCES

ALR. — Disqualification, for bias or interest, of member of occupation of pro-

fession sitting in license revocation proceeding, 97 ALR2d 1210.

43-30-3. Terms of office for board members; vacancies.

Two members of the board shall be appointed for one year, two for two years, and one for three years; and after the expiration of the terms of office of the members so first appointed, subsequent appointments shall be for a term of three years. Any vacancy that may occur from any cause shall be filled by the Governor for the unexpired term. (Ga. L. 1916, p. 83, § 3; Code 1933, § 84-1103.)

43-30-4. Election of board officers; rules, regulations, and by-laws as to board's proceedings; meetings.

The board shall annually elect a president and a vice-president who shall hold their offices until their successors are elected and qualified. The board shall prescribe such rules, regulations, and bylaws for its proceedings and governance as will put this chapter into effect. There shall be at least two regular meetings of the board held every year. Special meetings may be held on the call of the president and two other members. (Ga. L. 1916, p. 83, § 4; Code 1933, § 84-1104; Ga. L. 1982, p. 1278, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Board may hold such special meetings as the board may find necessary in addition to regular semiannual meetings. 1945-47 Op. Att'y Gen. p. 506.

43-30-5. Adoption of rules and regulations by board generally; restrictions on practice locations for doctors of optometry.

The board shall have the authority and power to adopt, establish, enforce, and maintain rules and regulations applicable to the practice of optometry adequate to put this chapter into effect and to regulate the practice of optometry as a profession in conformity with and in compliance with accepted professional standards; provided, however, the board shall not provide by rule to restrict the location of the practice of a licensed doctor of optometry, and any such rule now in effect shall be null and void. (Code 1933, § 84-1110A, enacted by Ga. L. 1963, p. 214, § 1; Ga. L. 1982, p. 1278, § 3; Ga. L. 1983, p. 3, § 32.)

Administrative rules and regulations. — Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia State Board of Examiners in Optometry, Chapter 430-1 et seq.

JUDICIAL DECISIONS

Delegation by legislature of rule-making authority is constitutional. — Legislative department of state, wherein Constitution has lodged all

legislative authority, will not be permitted to relieve itself by delegation thereof. It cannot confer on any person or body the power to determine what the law shall be. But this constitutional inhibition does not prevent grant of legislative authority to some administrative board or other tribunal to adopt rules, by-laws, or ordinances for its government, or to carry out a particular purpose. *Pearle Optical of Monroeville, Inc. v. Georgia State Bd. of Exmrs. in Optometry*, 219 Ga. 364, 133 S.E.2d 374 (1963).

Scope of rule-making authority. — Rules promulgated by administrative boards must be within framework of act creating the boards and designed to accomplish purpose of the act. *Pearle Optical of Monroeville, Inc. v. Georgia State Bd. of Exmrs. in Optometry*, 219 Ga. 364, 133 S.E.2d 374 (1963).

Rules promulgated hereunder have force of law. — When prescribed by proper action of the board, rules and regulations have all force and effect of statutes of the state. To disobey the rules and regulations is to violate the law. *Pearle Optical of Monroeville, Inc. v. Georgia State Bd. of Exmrs. in Optometry*, 219 Ga. 364, 133 S.E.2d 374 (1963).

To safeguard public, state may regulate learned professions. — In order

to safeguard the public, the state may make proper regulations concerning practice of medicine and surgery, dentistry, optometry, chiropody, chiropractic, and nursing; the state may also regulate practice of law. *Pearle Optical of Monroeville, Inc. v. Georgia State Bd. of Exmrs. in Optometry*, 219 Ga. 364, 133 S.E.2d 374 (1963).

Practice of optometry is subject to regulation for protection of public against ignorance, incapacity, deception, and fraud, equally with practice of ophthalmology and other learned professions, a category originally confined to theology, law, and medicine, but long since broadened in keeping with the diffusion of scientific learning and the need of specialized knowledge in functioning of the ever-expanding and complex society. *Pearle Optical of Monroeville, Inc. v. Georgia State Bd. of Exmrs. in Optometry*, 219 Ga. 364, 133 S.E.2d 374 (1963).

Inhibiting employment of licensed optometrist by unlicensed person or corporation is in keeping with public policy. *Pearle Optical of Monroeville, Inc. v. Georgia State Bd. of Exmrs. in Optometry*, 219 Ga. 364, 133 S.E.2d 374 (1963).

Cited in *Womble v. State Bd. of Exmrs.*, 221 Ga. 457, 145 S.E.2d 485 (1965); *Wall v. American Optometric Ass'n*, 379 F. Supp. 175 (N.D. Ga. 1974).

OPINIONS OF THE ATTORNEY GENERAL

Neither board nor any member thereof should encourage voluntary contributions to assist in meeting expenses incurred in administration of board's affairs. 1945-47 Op. Att'y Gen. p. 504.

Board may require incorporated optometrists to use personal name

only. — State Board of Examiners in Optometry has the authority to require optometrists who incorporate under Ga. L. 1970, p. 243, § 1 (see O.C.G.A. Ch. 7, T. 14) to use only their personal names in naming the professional corporation. 1971 Op. Att'y Gen. No. 71-180.

43-30-5.1. Advertising requirements.

Any truthful written or broadcast advertising for eye exam services whether regional or national by any optical firm with more than seven locations in the State of Georgia shall not be required to list the name of the optometrist in the advertisement provided those optometrists practicing under a trade name at a specific location shall be identified to any person inquiring by telephone. (Code 1981, § 43-30-5.1, enacted by Ga. L. 1988, p. 716, § 1.)

Administrative rules and regulations. — Deceptive advertising, Official Compilation of the Rules and Regulations

of the State of Georgia, Georgia State Board of Examiners in Optometry, Chapter 430-6,

43-30-6. Certificate of registration required.

It shall be unlawful for any person to practice optometry in this state unless he shall have first obtained a certificate of registration from the board and filed same with the clerk of the superior court of the county in which such practice is conducted. (Ga. L. 1916, p. 83, § 8; Code 1933, § 84-1107.)

JUDICIAL DECISIONS

Cited in Georgia State Bd. of Exmrs. in Optometry v. Friedmans' Jewelers, Inc., 183 Ga. 669, 189 S.E. 238 (1936); Wall v.

American Optometric Ass'n, 379 F. Supp. 175 (N.D. Ga. 1974).

OPINIONS OF THE ATTORNEY GENERAL

Regularly licensed optometrist may practice in any county in which the optometrist registers a license

with the clerk of superior court. 1945-47 Op. Att'y Gen. p. 507.

RESEARCH REFERENCES

ALR. — Right of corporation, or individual not himself licensed, to practice optometry through licensed employee, 102 ALR 343; 128 ALR 585.

One who fills prescriptions under reciprocal arrangement with physician or optometrist as subject to charge of practice of medicine or optometry without license, 121 ALR 1455.

What constitutes practice of "optometry," 88 ALR2d 1290; 82 ALR4th 816.

Right to enjoin business competitor

from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

Fitting of contact lenses as practice of optometry, 77 ALR3d 817.

43-30-6.1. Display of license or certificate of registration.

Persons holding a license or certificate of registration issued by the board shall display that license or certificate in a conspicuous place in that person's principal place of practice. (Code 1981, § 43-30-6.1, enacted by Ga. L. 1982, p. 1278, § 4.)

43-30-7. Certification and registration requirement; comity; qualifications examination.

(a) All persons engaged in the practice of optometry or who wish to begin the practice of optometry shall apply through the division director

to the board for a certificate of registration. Such certificate of registration shall be granted to such applicants upon compliance with the conditions contained in subsections (b), (c), and (d) of this Code section.

(b) The applicant shall be registered and given a certificate of registration if he or she holds a valid license from such other state boards of optometry as may be, under the rules of comity, recognized by the board. The fee for registering such applicant shall be in an amount determined by the board. A person practicing optometry who has been registered and given a certificate of registration under the rules of comity and who fails to pay the biennial registration fee, as established by the board, on or before the renewal date established by the division director shall forfeit his or her certificate of registration. Such person may be reinstated by paying all past due registration fees and an additional fee in an amount established by the board.

(c) Any other applicant for registration under this chapter shall be required to pass an examination approved by the board. In addition, each such applicant shall:

- (1) Be 21 years of age and of good moral character;
- (2) Possess a high school education of not less than 16 Carnegie units or the equivalent thereof to be determined by the board;
- (3) Have completed not less than two years of preoptometry college work in a college of arts and sciences approved by the board or the equivalent thereof to be determined by the board; and
- (4) Hold a certificate of graduation from an accredited college or university teaching optometry, acceptable to the board, requiring a course of study therein of at least four school years.

(d) Any applicant seeking a certificate of registration after July 1, 1994, must be qualified to use pharmaceutical agents for diagnostic and treatment purposes in accordance with subparagraph (A) of paragraph (2) of Code Section 43-30-1. Qualification to use pharmaceutical agents for diagnostic and treatment purposes shall be met by evidence of:

- (1) Successful completion of pharmacological training and certification from a properly accredited institution of higher learning, or the equivalent thereof to be determined by the board; and
- (2) Successful passage of an examination approved by the board which tests knowledge of pharmacology for treatment and management of ocular diseases. (Ga. L. 1916, p. 83, § 6; Code 1933, § 84-1105; Ga. L. 1953, Jan.-Feb. Sess., p. 114, § 1; Ga. L. 1960, p. 961, § 1; Ga. L. 1971, p. 425, § 1; Ga. L. 1976, p. 185, § 1; Ga. L. 1994, p. 853, § 3; Ga. L. 2000, p. 1706, § 19; Ga. L. 2010, p. 266, § 35/SB 195.)

The 2010 amendment, effective May 20, 2010, in subsection (c), deleted “meet the following requirements” following “applicant shall” at the end of the introductory paragraph, deleted a comma following “16 Carnegie units” in paragraph (c)(2), deleted a comma following “approved by the board” in paragraph (c)(3), and deleted the former ending paragraph which read: “Failure to pass a satisfactory examination shall not debar the applicant from participating in subsequent examinations before the board upon his or her

complying with this chapter and upon payment of a reexamination fee as established by the board.”.

Cross references. — Cooperation between Georgia and other states, T. 28, C. 6.

Administrative rules and regulations. — Examination requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Examiners in Optometry, Chapter 430-11.

JUDICIAL DECISIONS

Unlicensed corporation or individual cannot practice through licensed employee. — Absent express statutory authority, a corporation or individual not licensed to practice optometry cannot practice optometry through a licensed employee. *Lee Optical of Ga., Inc. v. Georgia State Bd. of Exmrs. in Optometry*, 220 Ga. 204, 138 S.E.2d 165 (1964).

Cited in Georgia State Bd. of Exmrs. in Optometry v. Friedmans' Jewelers, Inc., 183 Ga. 669, 189 S.E. 238 (1936); *Kahn v. Shaw*, 65 Ga. App. 563, 16 S.E.2d 99 (1941); *Pearle Optical of Monroeville, Inc. v. Georgia State Bd. of Exmrs. in Optometry*, 219 Ga. 364, 133 S.E.2d 374 (1963); *Wall v. American Optometric Ass'n*, 379 F. Supp. 175 (N.D. Ga. 1974).

OPINIONS OF THE ATTORNEY GENERAL

Former Code 1933, §§ 84-1105 and 84-1110 (see O.C.G.A. §§ 43-30-7 and 43-30-9) clearly place discretionary authority in board. 1945-47 Op. Att'y Gen. p. 496.

Board has no authority to prescribe any period of residence as prerequisite to consideration of application to practice optometry in Georgia. 1945-47 Op. Att'y Gen. p. 500.

Board may require examinations for optometrists from states with residency requirements. — Board is not required, under rules of comity, to issue

licenses upon applications presented by persons licensed to practice in other states where such residence periods are required, where recognition of Georgia licenses are held subject to that condition, but board has right to require such persons to undergo examination as is set forth in the statute. 1945-47 Op. Att'y Gen. p. 500.

Regularly licensed optometrist may practice in any county in which that optometrist registers with the clerk of superior court. 1945-57 Op. Att'y Gen. p. 507.

RESEARCH REFERENCES

ALR. — Judicial review of decision upon application for license to practice

within state by physician or surgeon from another state or country, 136 ALR 742.

43-30-8. Biennial registration; educational programs for optometrists; forfeiture of certificate upon failure to comply; reinstatement of certificate.

(a) Each person practicing optometry shall register biennially with the division director by completing and filing a form to be furnished by the board.

(b) The board may approve educational programs to be held within or outside this state. The board shall approve only such educational programs as are available to all persons practicing optometry in the state on a reasonable nondiscriminatory fee basis. Any request for board approval of an educational program shall be submitted in a timely manner with due regard for the necessity of investigation and consideration by the board. The board may contract with institutions of higher learning, professional organizations, or qualified individuals for the providing of programs that meet this requirement; and such programs shall be self-sustaining by the individual fees set and collected by the provider of the program. The minimum number of hours of continuing education required shall be fixed by the board by February 1 of each calendar year. In no instance may the board require a greater number of hours of study than are available at approved courses held within the state; and the board is authorized to waive this requirement in cases of certified illness or undue hardship. Continuing education requirements fixed by the board pursuant to this chapter shall not apply to persons practicing optometry who are 65 or more years of age.

(c) Failure to register, to pay the registration fee, or to submit satisfactory proof of training shall forfeit the certificate of the delinquent optometrist; but a practitioner's certificate may be restored upon payment of all delinquent registration fees, a penalty as established by the board, and the submission of satisfactory proof of training. (Ga. L. 1933, p. 202, § 1; Code 1933, § 84-1109; Ga. L. 1956, p. 691, § 7; Ga. L. 1960, p. 961, § 2; Ga. L. 1971, p. 234, § 1; Ga. L. 1976, p. 185, § 2; Ga. L. 1988, p. 34, § 2; Ga. L. 2000, p. 1706, § 19.)

JUDICIAL DECISIONS

Prior approval of educational programs not required. — Statute did not state specifically, nor necessarily implied, that educational program must be approved by board prior to time program was held. State Bd. of Exmrs. in Optometry v. Society of Professional Optometrists, Inc., 231 Ga. 44, 200 S.E.2d 123 (1973) (see O.C.G.A. § 43-30-8(b)).

Request for approval submitted two weeks before seminar not untimely absent rule to contrary. — When no rules setting a longer period of time for submitting requests of approval were in effect, board was not authorized to refuse to consider a request submitted by letter two weeks prior to the seminar as being untimely. State Bd. of Exmrs. in

Optometry v. Society of Professional Optometrists, Inc., 231 Ga. 44, 200 S.E.2d 123 (1973) (see O.C.G.A. § 43-30-8).

OPINIONS OF THE ATTORNEY GENERAL

Statute applied only to persons actively engaged in practice of optometry. 1945-47 Op. Att'y Gen. p. 496. (see O.C.G.A. § 43-30-8).

"Practice of optometry" defined. — Practice of optometry refers to frequent or habitual exercising of calling by one who habitually holds self out to public as being a practicing optometrist. 1945-47 Op. Att'y Gen. p. 496.

Phrase "practice of optometry" is distinguishable from that of "licensed to practice optometry." 1945-47 Op. Att'y Gen. p. 496.

What actually constitutes "practice of optometry" is a matter of fact in each situation. 1945-47 Op. Att'y Gen. p. 496.

One allowing license to lapse not entitled to automatic reinstatement. — Persons who for some years have not practiced or who are not presently practicing optometry and who have not maintained payment of required registration fees, thus forfeiting their certificates to practice, are not entitled to reinstatement

as a matter of right by tendering all past due registration fees plus prescribed penalty. It is within the discretion of the board to promulgate reasonable rules and regulations concerning reissuing licenses to such persons. 1945-47 Op. Att'y Gen. p. 496.

Loss of privilege by nonuse. — One who is or has been licensed to practice optometry, but who nevertheless is not now engaged in the practice, or who for a period of years has been licensed but has not practiced, is excluded from privilege of annually (now biennially) registering and paying proper fee, or in case of delinquency, from securing a license to practice by paying back fees plus penalty prescribed. 1945-47 Op. Att'y Gen. p. 496.

Board may require proof of practice at time of application. — It is within the discretion of the board to require proof by the applicant that the applicant is actually in practice at time of tendering an application or that the applicant has been in active practice within a reasonable time prior thereto. 1945-47 Op. Att'y Gen. p. 496.

43-30-9. Refusal or revocation of certificates; appeals.

(a) The board shall refuse to issue its certificate of registration and may revoke its certificate of registration issued to any person who is not of good moral character, or who commits an act involving moral turpitude, or who is guilty of unprofessional conduct, or whose certificate was issued through error, fraud, or perjury, or who knowingly makes any fraudulent, misleading, or deceptive statement in any form of advertising, or who makes any statement in any advertising concerning the quality of optometric services rendered by the registrant or licensee or any optometrist associated with him.

(b) The board shall serve written notice of the charges on such accused person at least ten days prior to the date set for hearing, and said person shall be notified to appear before the board to answer the charges at such time and place as the board may direct. Such notice shall plainly set forth the charges made and notify the accused person to appear to answer the same. On such hearing, if the charges are found true, the accused having the right to produce witnesses in his behalf

and cross-examine those testifying against him, the board shall render judgment after such hearing; and the person accused may enter an appeal to the next superior court of the county in which the hearing is held. If he is dissatisfied with the finding, such appeal is to be governed by the law relating to appeals in other cases. (Ga. L. 1916, p. 83, § 7; Ga. L. 1933, p. 202, § 2; Code 1933, § 84-1110; Ga. L. 1972, p. 916, § 1; Ga. L. 1982, p. 1278, § 5.)

JUDICIAL DECISIONS

Cited in Georgia State Bd. of Exmrs. in Optometry v. Friedmans' Jewelers, Inc., 183 Ga. 669, 189 S.E. 238 (1936).

OPINIONS OF THE ATTORNEY GENERAL

Legislature intended to limit board's discretion in revoking or refusing registration. — General Assembly by passage of this statute definitely presented bounds within which administrative discretion of board might be exercised in refusing to issue certificates of registration and to revoke such certificates of those persons guilty of highly unprofessional conduct. 1948-49 Op. Att'y Gen. p. 327 (see O.C.G.A. § 43-30-9).

Scope of board's authority over practitioners. — Former Code 1933, §§ 84-1110 and 84-1111 (see O.C.G.A. §§ 43-30-9 and 43-30-12) enumerate fully the authority vested in the board which may be exercised by that body over any or all regularly licensed practicing optometrists or nonlicensed practicing optometrists; after admission to practice, there is no authority over licensed practicing optometrists given to board outside of these sections. 1945-47 Op. Att'y Gen. p. 503.

Former Code 1933, §§ 84-1105 and 84-1110 (see O.C.G.A. §§ 43-30-7 and 43-30-9) clearly place discretionary authority in board over areas enumerated. 1945-47 Op. Att'y Gen. p. 496.

Violation of optometrists' code of ethics. — Whether violation of code of ethics adopted by State Association of Optometrists constitutes highly unprofessional conduct warranting revocation of license to practice optometry was an administrative question for determination by the board. 1945-47 Att'y Gen. p. 504.

Certain advertising as unprofessional conduct. — Whether certain types of advertising constitute highly unprofessional conduct warranting revocation of license to practice optometry is an administrative question for determination by the board. 1945-47 Op. Att'y Gen. p. 500.

RESEARCH REFERENCES

ALR. — Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 ALR 1388.

Professional incompetency as ground for disciplinary measure against physician or dentist, 28 ALR3d 487.

Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer, 59 ALR4th 1104.

43-30-10. Appeal from board decisions.

Actions of the board in granting, refusing to grant, or refusing to renew a license issued under this chapter or in revoking or suspending

or refusing to revoke or suspend any such license shall be subject to appeal to the superior court in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Code 1933, § 84-1110B, enacted by Ga. L. 1963, p. 214, § 1; Ga. L. 1966, p. 299, § 1.)

43-30-11. Agency representative to determine contested cases; judicial review.

(a) Upon the written request of the board, the division director shall have the power under paragraph (5) of subsection (a) of Code Section 50-13-13 to select and appoint an agency representative to determine a contested case pending before the board to the extent and in the manner provided by law.

(b) In any contested case brought under authority of this chapter to enforce this chapter, a party aggrieved by an initial decision of the agency representative may immediately seek judicial review thereof within the time and in the manner provided by Code Section 50-13-19 if board review of the initial decision of the agency representative in accordance with Code Section 50-13-17 would not provide an adequate remedy or if such board review is unlawful. Upon such appeal, the court shall first determine the claim supporting the intermediate appeal. If the court determines the claim adversely to the petitioner, it shall remand the case to the board which shall then proceed in accordance with Code Section 50-13-17, except that the board shall consider the initial decision of the hearing representative as having been filed with it on the date of remand from the court. If the court determines the claim adversely to the board, it shall treat the initial decision of the agency representative as a final decision of the board and determine all other issues in the case in accordance with Code Section 50-13-19. (Code 1933, § 84-1110.3, enacted by Ga. L. 1976, p. 1575, § 1; Ga. L. 1982, p. 3, § 43; Ga. L. 2000, p. 1706, § 19.)

43-30-12. Unlicensed practice as constituting a nuisance; injunction.

The practice of optometry by any unregistered or unlicensed optometrist is declared to be a menace and a nuisance and dangerous to the public health and safety; and the board shall promptly abate such practice by filing an action for an injunction in the county in which such practice is conducted. The practice shall be enjoined unless it shall be made to appear that such practitioner is licensed and registered. The board is authorized to file and prosecute such action, and it shall be its duty to do so. (Ga. L. 1933, p. 202, § 3; Code 1933, § 84-1111.)

OPINIONS OF THE ATTORNEY GENERAL

Scope of board's authority over practitioners. — Former Code 1933, §§ 84-1110 and 84-1111 (see O.C.G.A. §§ 43-30-9 and 43-30-12) enumerate fully the authority vested in the board which may be exercised by that body over any or all regularly licensed practicing optome-

trists or nonlicensed practicing optometrists; after admission to practice, there is no authority over licensed practicing optometrists given to the board outside of these sections. 1945-47 Op. Att'y Gen. p. 503.

43-30-13. Construction of chapter.

(a) Nothing in this chapter shall be construed to apply to physicians and surgeons duly licensed to practice medicine, nor to prevent persons from selling spectacles or eyeglasses on prescription from any duly qualified optometrist or physician, nor to prevent any person from selling glasses as articles of merchandise or from using test cards in connection with the sale of such glasses at a permanently located place when not trafficking or attempting to traffic upon assumed skill in optometry; nor shall anything in this chapter be construed to authorize any registered optometrist to prescribe or administer drugs except as permitted by law or practice medicine or surgery in any manner as defined by the laws of this state; nor shall this chapter be construed to authorize any such person to use the title of "M.D." or any other title mentioned in Code Section 43-34-21 or 43-34-22.

(b) Nothing in this chapter shall be construed to imply liability, either civil or criminal, on the part of a pharmacist who is duly licensed under Title 26 and who in good faith fills a prescription presented by a patient pursuant to this chapter. The pharmacist shall presume that the prescription was issued by a duly licensed optometrist under this chapter who has qualified under this Code section to prescribe pharmaceutical agents. The pharmacist shall also presume that the pharmaceutical agent prescribed by the optometrist is an approved pharmaceutical agent, unless the pharmacist has actual or constructive knowledge to the contrary. (Ga. L. 1916, p. 83, § 9; Code 1933, § 84-1108; Ga. L. 1988, p. 34, § 3; Ga. L. 2009, p. 859, § 13/HB 509.)

The 2009 amendment, effective July 1, 2009, substituted "Code Section 43-34-21 or 43-34-22" for "Code Section

43-34-20 or 43-34-26" at the end of subsection (a).

JUDICIAL DECISIONS

Cited in Georgia State Bd. of Exmrs. in Optometry v. Friedmans' Jewelers, Inc., 183 Ga. 669, 189 S.E. 238 (1936); Georgia

Ass'n of Osteopathic Physicians & Surgeons, Inc. v. Allen, 31 F. Supp. 206 (M.D. Ga. 1940).

RESEARCH REFERENCES

ALR. — Right of corporation, or individual not himself licensed, to practice optometry through licensed employee, 102 ALR 343; 128 ALR 585.

One who fills prescriptions under reciprocal arrangement with physician or op-

tometrists as subject to charge of practice medicine or optometry without license, 121 ALR 1455.

Fitting of contact lenses as practice of optometry, 77 ALR3d 817.

43-30-14. Practicing optometry without a license.

Any person who practices optometry or who offers or pretends to practice or holds himself or herself out as eligible to practice optometry and who is not legally registered and licensed shall be guilty of a felony. (Ga. L. 1916, p. 83, § 8; Ga. L. 1933, p. 202, § 4; Code 1933, § 84-9917; Ga. L. 2003, p. 315, § 1.)

Cross references. — False or fraudulent advertising, § 10-1-420 et seq.

JUDICIAL DECISIONS

Cited in Georgia State Bd. of Exmrs. in Optometry v. Friedmans' Jewelers, Inc., 183 Ga. 669, 189 S.E. 238 (1936); Wall v.

American Optometric Ass'n, 379 F. Supp. 175 (N.D. Ga. 1974).

RESEARCH REFERENCES

ALR. — What constitutes practice of "optometry," 88 ALR2d 1290; 82 ALR4th 816.

Practicing medicine, surgery, dentistry, optometry, podiatry, or other healing arts

without license as a separate or continuing offense, 99 ALR2d 654.

Fitting of contact lenses as practice of optometry, 77 ALR3d 817.

43-30-15. Termination.

Repealed by Ga. L. 1992, p. 3137, § 25, effective July 1, 1992.

Editor's notes. — This Code section was based on Ga. L. 1982, p. 1278, §§ 1, 6 and Ga. L. 1988, p. 530, § 6.

CHAPTER 31

PECAN DEALERS AND PROCESSORS

Sec.		Sec.	
43-31-1.	Definitions.	43-31-6.	Forfeiture of right to license upon conviction for larceny of pecans or for receipt of stolen pecans.
43-31-2.	Registration requirement for pecan dealers.	43-31-7.	Engaging in purchase or sale of pecans after conviction for larceny of pecans or for receipt of stolen pecans.
43-31-3.	Recording sales by dealers; opening records to public authorities.	43-31-8.	Purchase and sale of pecans without a license; penalty.
43-31-4.	Expiration and renewal of licenses.		
43-31-5.	Supplementary nature of license fees.		

Cross references. — Authority of Commissioner of Agriculture with regard to dealers in agricultural products, § 2-9-1 et seq. Roadside Markets Incentive Program, § 2-10-130 et seq.

tions. — Marketing order for pecans, Official Compilation of the Rules and Regulations of the State of Georgia, Agricultural Commodity Commission for Pecans, Chapter 472-1.

Administrative rules and regula-

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614,

615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

43-31-1. Definitions.

As used in this chapter, the term:

(1) “Dealer” means any person, firm, or corporation engaged in buying pecans for the purpose of resale or processing or any person, firm, or corporation engaged in selling or processing pecans which were bought for the purpose of resale or processing.

(2) "Pecans" means any and every kind and variety of pecans. (Ga. L. 1943, p. 549, §§ 1, 1A.)

RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Food, § 3 et seq. **C.J.S.** — 36A C.J.S., Food, § 3 et seq.

43-31-2. Registration requirement for pecan dealers.

(a) Every dealer in, and processor of, pecans shall, before engaging in such occupation, register with the judge of the probate court of the county of his residence and obtain a license from such judge who shall require from such dealer or processor a written statement of his name, age, and place of residence, and, in the case of a corporation, a statement of the location of its principal office.

(b) Any dealer moving to another county shall be required to obtain a license in that county.

(c) The judge of the probate court shall be entitled to receive a fee of 50¢ for issuing such license. (Ga. L. 1943, p. 549, § 2.)

Cross references. — Licensing pecan processors by Department of Agriculture, § 2-14-61.

RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Food, § 11. **ALR.** — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.
C.J.S. — 36A C.J.S., Food, §§ 5, 12.

43-31-3. Recording sales by dealers; opening records to public authorities.

Any dealer in pecans who buys any pecans for resale, or for the purpose of processing same, in an amount exceeding the market value of \$5.00 at one time shall, at the time of purchase, make a record of the name and address of the seller, the date of the purchase, the amount of the nuts purchased, kinds purchased, and where purchased. These records shall be kept available to public authorities for at least 12 months after the date of the purchase. (Ga. L. 1943, p. 549, § 4.)

Administrative rules and regulations. — Pecan rules and regulations, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Agriculture, Food Division Regulations, Chapter 40-7-7.

43-31-4. Expiration and renewal of licenses.

All licenses provided for in this chapter shall expire on June 1 of each year but may be renewed from year to year pursuant to this chapter. (Ga. L. 1943, p. 549, § 6.)

43-31-5. Supplementary nature of license fees.

Any license fees authorized by this chapter shall be in addition to any other license charges provided by law. (Ga. L. 1943, p. 549, § 8.)

43-31-6. Forfeiture of right to license upon conviction for larceny of pecans or for receipt of stolen pecans.

Any person who has been found guilty of the offense of larceny of any pecans or of receiving any pecans knowing them to have been stolen shall, after judgment therefor has become final, be ineligible to receive another license under this chapter; and any license previously or subsequently issued to him shall be absolutely void. (Ga. L. 1943, p. 549, § 7.)

43-31-7. Engaging in purchase or sale of pecans after conviction for larceny of pecans or for receipt of stolen pecans.

Any person who has been found guilty of the offense of larceny of any pecans or of receiving any pecans knowing them to have been stolen shall not thereafter buy or receive delivery of any pecans for the purpose of resale or processing or sell any pecans previously bought for the purpose of resale or processing. Any person who violates this Code section shall be guilty of a misdemeanor. (Ga. L. 1943, p. 549, § 7.)

43-31-8. Purchase and sale of pecans without a license; penalty.

(a) It shall be unlawful for any person, firm, or corporation to buy pecans for the purpose of resale or the purpose of processing, or to sell such nuts theretofore bought for the purpose of resale, or for the purpose of processing, in amounts exceeding the market value of \$5.00 at any one time, without first having registered and obtained a license as provided in this chapter.

(b) Any person, firm, or corporation who violates this chapter shall be guilty of a misdemeanor. (Ga. L. 1943, p. 549, § 3.)

RESEARCH REFERENCES

ALR. — Single or isolated transactions or occupational licensing requirements, as falling within provisions of commercial 93 ALR2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

CHAPTER 32

PEDDLERS AND ITINERANT TRADERS

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| Sec. | Sec. |
| 43-32-1. License required in each county in which trade to be conducted; fees; scope of license. | 43-32-4. License required for each vehicle used in business; failure or refusal to exhibit license. |
| 43-32-2. Qualifications and oath of peddlers; record of oath and license; description of peddler in license. | 43-32-5. Fees for licenses to indigent and infirm persons. |
| 43-32-3. Grant of licenses to aliens. | 43-32-6. Exceptions to operation of chapter. |
| | 43-32-7. Penalty for selling without license. |

Cross references. — Transient merchants, T. 43, C. 46.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public

Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

Reasonableness of amount of license fee exacted of peddlers or transient merchants, 39 ALR 1385.

Validity of municipal ordinance prohibiting house-to-house soliciting and peddling without invitation, 35 ALR2d 355.

Construction and application of municipal ordinance prohibiting house-to-house soliciting and peddling without invitation, 77 ALR2d 1216.

43-32-1. License required in each county in which trade to be conducted; fees; scope of license.

Every peddler or itinerant trader, by sample or otherwise, shall apply for a license to the judge of the probate court of each county where he may desire to trade, which license shall be granted to him on the terms the judge of the probate court may impose. The judges of the probate courts are authorized to impose such license fee as they may deem advisable, which fee shall be used for county purposes. The license shall

extend only to the limits of the county. (Laws 1819, Cobb's 1851 Digest, p. 773; Code 1863, § 1564; Code 1868, § 1625; Code 1873, § 1631; Ga. L. 1880-81, p. 75, § 1; Code 1882, § 1631; Civil Code 1895, § 1640; Civil Code 1910, § 1886; Code 1933, § 84-2001.)

JUDICIAL DECISIONS

Definition of peddler. — Peddler is one who goes from place to place exhibiting wares and actually selling the wares whenever the peddler finds the opportunity. *Kimmel v. Mayor of Americus*, 105 Ga. 694, 31 S.E. 623 (1898); *Singleton v. State*, 14 Ga. App. 527, 81 S.E. 596 (1914).

Employee of corporation who drives "rolling store" is subject to licensing requirements. — Person who travels from place to place in a truck designed to carry general stock of merchandise, commonly known as a "rolling store," for purpose of offering for sale and who does actually sell and deliver such merchandise to persons along the way is a peddler and is required to obtain a license from the ordinary (now probate judge) of county or counties in which the peddler so operates, and for failure to so do the peddler is subject to prosecution; it makes no difference that such person is employed by a corporation authorized by the corporation's charter to carry on such a business. *Crawley v. State*, 57 Ga. App. 376, 195 S.E. 453 (1938).

Agent selling by samples must obtain license. — An agent engaged in going from house to house, carrying samples of curtains and rugs, and taking orders for such goods, which orders are filled by the agent's principals, is a peddler. *Wrought Iron Range Co. v. Johnson*, 84 Ga. 754, 11 S.E. 233, 8 L.R.A. 273 (1890); *Kimmel v. Mayor of Americus*, 105 Ga. 694, 31 S.E. 623 (1898).

Person taking orders and person delivering goods both considered peddlers. — When one person travels through country as an itinerant, exhibiting samples of goods and taking orders for goods of like character, and another follows in that person's wake delivering goods thus sold, both should be regarded as peddlers when it appears that business

was thus conducted in pursuance of a scheme to evade the law of this state requiring peddlers to register and pay taxes. *Duncan v. State*, 105 Ga. 457, 30 S.E. 755 (1898).

Selling at fixed place of business is not peddling. — No person bringing a large stock of goods into a town, opening a house, and selling goods out of the house is considered a peddler. *T. Gould & Co. v. Mayor of Atlanta*, 55 Ga. 678 (1876).

Peddler or hawker is in contradistinction to a trader who has goods for sale and sells the goods in a fixed place of business. *T. Gould & Co. v. Mayor of Atlanta*, 55 Ga. 678 (1876); *Singleton v. State*, 14 Ga. App. 527, 81 S.E. 596 (1914).

Only the person who itinerates for trading purposes is a peddler. The person's employer, though owning the goods, team and vehicle, is not required to obtain a license, nor subject to any penalty or forfeiture for failing to do so. *Wrought Iron Range Co. v. Johnson*, 84 Ga. 754, 11 S.E. 233, 8 L.R.A. 273 (1890).

Tax on peddlers of bananas not permitted as bananas are agricultural products. *Chatolis v. Phillips*, 142 Ga. 456, 83 S.E. 106 (1914).

Accusation need not show defendant not exempt from license requirements. — Accusation charging one with offense of peddling without a license need not charge that accused was not peddling agricultural implements, jugs, and flower pots, and was therefore not exempt from the license requirement. *Crawley v. State*, 57 Ga. App. 376, 195 S.E. 453 (1938).

Cited in *Rich v. W.T. Rawleigh Co.*, 47 Ga. App. 571, 171 S.E. 228 (1933); *Brooks County v. Ilex Theatre, Inc.*, 184 Ga. 422, 191 S.E. 436 (1937); *Brooks County v. Ilex Theatre, Inc.*, 56 Ga. App. 4, 192 S.E. 83 (1937).

OPINIONS OF THE ATTORNEY GENERAL

Free license to peddle in county not exemption from municipal license fee. — Grant of free license to peddle in county to indigent and crippled person does not relieve that person from payment of city license fees validly imposed by a municipality within the county. 1952-53 Op. Att’y Gen. p. 453.

Sellers of produce or other direct farm products, selling directly to a consumer, are exempt from city, county, or state occupational or peddlers’ license fees. 1967 Op. Att’y Gen. No. 67-329.

Purchasers of produce or other direct farm products selling the products directly to a consumer are ex-

empt from city, county, or state occupational or peddlers’ license fees. 1952-53 Op. Att’y Gen. p. 449.

Business operated on property of state farmers market is exempted from municipal taxation and regulations of any kind except certain regulations as to police, fire, and health; anyone operating a business on a state farmers market who leaves the market and solicits orders and makes deliveries in an adjacent municipality would be subject to municipal license laws unless exempted under one of the statutes exempting agricultural products. 1954-56 Op. Att’y Gen. p. 494.

RESEARCH REFERENCES

Am. Jur. 2d. — 60 Am. Jur. 2d, Peddlers, Solicitors, and Transient Dealers, § 26 et seq.

C.J.S. — 39A C.J.S., Hawkers and Peddlers, § 5 et seq.

ALR. — State or municipal regulation of bootblacks, 2 ALR 114.

Reasonableness of amount of license fee exacted of peddlers or transient merchants, 39 ALR 1385.

License fee imposed on operation of vehicles in street as double taxation of one who is subject to an occupation tax on business or occupation involving use or leasing of vehicles, 147 ALR 309.

Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

Authorization, prohibition, or regulation by municipality of the sale of merchandise on streets or highways, or their use for such purpose, 14 ALR3d 896.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

43-32-2. Qualifications and oath of peddlers; record of oath and license; description of peddler in license.

Every peddler shall furnish the judge of the probate court with evidence of his good character and shall take and subscribe before him this oath:

“I swear that I will use this license in no county other than the one for which it is granted, that I will not suffer any person to use it in my name, and that I am a citizen of this state. So help me God.”

Such oath and license shall be entered in the book kept for that purpose. The license shall contain a physical description of the peddler. (Laws 1819, Cobb’s 1851 Digest, p. 774; Code 1863, § 1567; Code 1868, § 1628; Code 1873, § 1634; Code 1882, § 1634; Civil Code 1895, § 1647; Civil Code 1910, § 1893; Code 1933, § 84-2002.)

JUDICIAL DECISIONS

Corporation cannot be licensed as a peddler. *Wrought Iron Range Co. v. Johnson*, 84 Ga. 754, 11 S.E. 233, 8 L.R.A. 273 (1890); *Singleton v. State*, 14 Ga. App. 527, 81 S.E. 596 (1914) (see O.C.G.A. § 43-32-2).

Payment of fee by corporation does not absolve employee of provisions. — Fact that a corporation has paid fee required by law does not authorize employee, servant, or agent of corporation to

peddle without personal compliance with requirements of this statute. *Wrought Iron Range Co. v. Johnson*, 84 Ga. 754, 11 S.E. 233, 8 L.R.A. 273 (1890); *Singleton v. State*, 14 Ga. App. 527, 81 S.E. 596 (1914) (see O.C.G.A. § 43-32-2).

Cited in *Brooks County v. Ilex Theatre, Inc.*, 184 Ga. 422, 191 S.E. 436 (1937); *Brooks County v. Ilex Theatre, Inc.*, 56 Ga. App. 4, 192 S.E. 83 (1937).

43-32-3. Grant of licenses to aliens.

A person who is not a citizen of the United States shall not be granted a license to peddle in this state unless he declares and swears to his intention to become a citizen. (Orig. Code 1863, § 1570; Code 1868, § 1631; Code 1873, § 1637; Code 1882, § 1637; Civil Code 1895, § 1650; Civil Code 1910, § 1896; Code 1933, § 84-2003.)

RESEARCH REFERENCES

ALR. — Constitutionality of discrimination against aliens in legislation relating to licenses, 39 ALR 346.

43-32-4. License required for each vehicle used in business; failure or refusal to exhibit license.

There shall be a separate license for every vehicle used in vending such goods, wares, or merchandise, which license shall be shown to any peace officer demanding it. On failure or refusal to exhibit the license, the peddler shall forfeit \$500.00, to be recovered through an action of the informer. One-half of such sum shall go to the informer, the other to the educational fund of the county. (Laws 1819, Cobb's 1851 Digest, pp. 773, 774; Code 1863, § 1568; Code 1868, § 1629; Code 1873, § 1635; Code 1882, § 1635; Civil Code 1895, § 1648; Civil Code 1910, § 1894; Code 1933, § 84-2004.)

RESEARCH REFERENCES

ALR. — License fee imposed on operation of vehicles in street as double taxation of one who is subject to an occupation

tax on business or occupation involving use or leasing of vehicles, 147 ALR 309.

43-32-5. Fees for licenses to indigent and infirm persons.

Judges of the probate courts are authorized to grant licenses to peddle to indigent and infirm persons upon such terms as the judges in their discretion may impose. (Laws 1850, Cobb's 1851 Digest, p. 777; Code 1863, § 1569; Code 1868, § 1630; Code 1873, § 1636; Code 1882, § 1636; Civil Code 1895, § 1649; Civil Code 1910, § 1895; Code 1933, § 84-2005.)

JUDICIAL DECISIONS

Peddler is one going from place to place exhibiting wares and selling the wares whenever the peddler finds the opportunity. *Chambers v. State*, 60 Ga. App. 876, 5 S.E.2d 583 (1939).

Only the person who itinerates for trading purposes was a peddler, and that person alone was exempt under provisions of this statute. *Chambers v. State*, 60 Ga. App. 876, 5 S.E.2d 583 (1939) (see O.C.G.A. § 43-32-5).

Free license to peddle in county not exemption from municipal license requirement. — Grant by the ordinary (now probate judge) of Fulton County of a license did not relieve such person from the necessity of obtaining a city license from the municipal authorities of the City of Atlanta. *Justice v. City of Atlanta*, 122 Ga. 152, 50 S.E. 61 (1905) (see O.C.G.A. § 43-32-5).

OPINIONS OF THE ATTORNEY GENERAL

Free license to peddle in county not exemption from municipal license fees. — Grant of free license to peddle in county to indigent and crippled person does not relieve that person from payment

of city license fees validly imposed by a municipality within the county. 1952-53 Op. Att'y Gen. p. 453; 1952-53 Op. Att'y Gen. p. 519.

RESEARCH REFERENCES

ALR. — Reasonableness of amount of license fee exacted of peddlers or transient merchants, 39 ALR 1385.

43-32-6. Exceptions to operation of chapter.

None of the provisions of this chapter shall extend to persons selling the agricultural products of any state, nor to persons selling agricultural implements, nor to persons selling engaged in the manufacturing and selling of jugs and flower pots. (Orig. Code 1863, § 1565; Code 1868, § 1626; Code 1873, § 1632; Code 1882, § 1632; Ga. L. 1887, p. 33, § 1; Civil Code 1895, § 1641; Civil Code 1910, § 1887; Code 1933, § 84-2010.)

Cross references. — Itinerant vendors of seeds, § 2-11-27.

JUDICIAL DECISIONS

Rolling store seller working for corporation needs license. — Person who travels from place to place in truck designed to carry general stock of merchandise, commonly known as a “rolling store,” for purpose of offering for sale and who does actually sell and deliver such merchandise to persons along the way, is a peddler and is required to obtain a license from the ordinary (now probate judge) of the county or counties in which the peddler operates, and for a failure to so do the peddler is subject to prosecution; it makes no difference that such person is employed

by a corporation authorized by the corporation’s charter to carry on such a business. *Crawley v. State*, 57 Ga. App. 376, 195 S.E. 453 (1938).

Charge of peddling without license need not show defendant is not exempt from license requirement. — Accusation charging one with offense of peddling without a license need not charge that accused was not peddling agricultural implements, jugs, and flower pots, and was therefore not exempt from requirement of a license. *Crawley v. State*, 57 Ga. App. 376, 195 S.E. 453 (1938).

OPINIONS OF THE ATTORNEY GENERAL

Sellers of produce or other direct farm products, selling directly to the consumer, are exempt from city, county, or state occupational or peddlers’ license fees. 1967 Op. Att’y Gen. No. 67-329.

Purchasers of produce or other direct farm products selling directly to the consumer are exempt from city, county, or state occupational or peddlers’ license fees. 1952-53 Op. Att’y Gen. p. 449.

Business operated on property of

state farmers market is exempted from municipal taxation and regulations of any kind except certain regulations as to police, fire, and health; anyone operating a business on a state farmers market who leaves the market and solicits orders and makes deliveries in an adjacent municipality is subject to municipal license laws unless exempted under one of the statutes exempting agricultural products. 1954-56 Op. Att’y Gen. p. 494.

43-32-7. Penalty for selling without license.

Any peddler or itinerant trader who sells any goods, wares, or merchandise, except such as are excepted by law, without a license from the proper authority shall be guilty of a misdemeanor. (Cobb’s 1851 Digest, p. 822; Code 1863, § 4466; Code 1868, § 4510; Code 1873, § 4598; Code 1882, § 4598; Penal Code 1895, § 600; Penal Code 1910, § 631; Code 1933, § 84-9933; Ga. L. 1982, p. 3, § 43.)

JUDICIAL DECISIONS

Statute was not operative against one engaged in interstate commerce. *Stone v. State*, 117 Ga. 292, 43 S.E. 740 (1903) (see O.C.G.A. § 43-32-7).

Both person taking orders by sample and person delivering goods thus sold are peddlers. *Duncan v. State*, 105 Ga. 457, 30 S.E. 755 (1898).

Employee of corporation who drives “rolling store” is subject to licensing requirements. — Person who

travels from place to place in a truck designed to carry general stock of merchandise, commonly known as a “rolling store,” for purpose of offering for sale and who does actually sell and deliver such merchandise to persons along the way, is a peddler and is required to obtain license from ordinary (now probate judge) of county or counties in which the peddler so operates, and for a failure to so do the peddler is subject to prosecution; it makes

no difference that such person is employed by a corporation authorized by the corporation's charter to carry on such a business. *Crawley v. State*, 57 Ga. App. 376, 195 S.E. 453 (1938).

Accusation need not show defendant is not exempt from license requirements. — Accusation charging one

with offense of peddling without a license need not charge that accused was not peddling agricultural implements, jugs, and flower pots, and was therefore not exempt from the requirement of a license. *Crawley v. State*, 57 Ga. App. 376, 195 S.E. 453 (1938).

CHAPTER 33

PHYSICAL THERAPISTS

Sec.		Sec.	
43-33-1.	Short title.	43-33-13.	Requirements for license to practice as physical therapist assistant.
43-33-2.	Declaration of purpose.	43-33-13.1.	Physical therapy aide.
43-33-3.	Definitions.	43-33-14.	Determining competence of applicants.
43-33-4.	Creation of board.	43-33-15.	Reciprocity; waiver of examination requirement for persons licensed in another state who meet certain qualifications.
43-33-5.	Appointment of board members; terms; vacancies; removal.	43-33-16.	Expiration, renewal, and restoration of licenses; canceled licenses; continuing education.
43-33-6.	Qualifications of board members.	43-33-17.	Training permits.
43-33-7.	Conduct of business by telephone.	43-33-18.	(Effective until January 1, 2013. See note.) Refusal to grant or restore licenses; discipline of licensees; suspension, revocation, or restriction of licenses; immunity for violation reporters.
43-33-8.	Reimbursement of board members.	43-33-18.	(Effective January 1, 2013. See note.) Refusal to grant or restore licenses; discipline of licensees; suspension, revocation, or restriction of licenses; immunity for violation reporters.
43-33-9.	(Effective until January 1, 2013. See note.) Division director as secretary of board; subpoena power; service of process and documents; official records as prima-facie evidence.	43-33-19.	Unlicensed practice as constituting public nuisance; injunctions.
43-33-9.	(Effective January 1, 2013. See note.) Division director as secretary of board; subpoena power; service of process and documents.	43-33-20.	Penalty.
43-33-10.	General powers and duties of board.	43-33-21.	Termination [Repealed].
43-33-11.	License required for physical therapists or physical therapist assistants; use of titles; limitation on scope of Code section.		
43-33-12.	Requirements for license to practice physical therapy.		

Administrative rules and regulations. — Organization of board, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Physical Therapy, Chapter 490-1.

Code of ethics, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Physical Therapy, Chapter 490-9.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A

Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am.

Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses,

§ 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

Licensing and regulation of practice of physical therapy, 8 ALR5th 825.

43-33-1. Short title.

This chapter shall be known and may be cited as the “Georgia Physical Therapy Act.” (Ga. L. 1972, p. 388, § 1; Ga. L. 1997, p. 715, § 1.)

JUDICIAL DECISIONS

Cited in *Wade v. John D. Archbold* Mem. Hosp., 252 Ga. 118, 311 S.E.2d 836 (1984).

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians and Surgeons and Other Healers, §§ 10, 31, 50.

C.J.S. — 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers, § 11 et seq.

43-33-2. Declaration of purpose.

This chapter is enacted for the purpose of safeguarding the public health, safety, and welfare by providing for state administrative control, supervision, and regulation of the practice of physical therapy. The practice of physical therapy is declared to be affected with the public interest; and this chapter shall be liberally construed so as to accomplish the purpose stated in this Code section. (Ga. L. 1972, p. 388, § 2; Ga. L. 1997, p. 715, § 1.)

43-33-3. Definitions.

As used in this chapter, the term:

(1) “Board” means the State Board of Physical Therapy.

(2) “License” means a valid and current certificate of registration issued by the board, which shall give the person to whom it is issued authority to engage in the practice prescribed thereon.

(3) "Licensee" means any person holding a license under this chapter.

(4) "Person" means a human being only, not a legal entity.

(5) "Physical therapist" means a person licensed to practice physical therapy as defined in this chapter and whose license is in good standing. A physical therapist shall be designated by the initials "P.T."

(6) "Physical therapist assistant" or "physical therapy assistant" means a person who is licensed by the board to assist a physical therapist, whose activities are supervised and directed by a physical therapist, and whose license is in good standing. A physical therapist assistant shall be designated by the initials "P.T.A."

(7) "Physical therapy" means the examination, treatment, and instruction of human beings to detect, assess, prevent, correct, alleviate, and limit physical disability, bodily malfunction and pain from injury, disease, and any other bodily and mental conditions and includes the administration, interpretation, documentation, and evaluation of tests and measurements of bodily functions and structures; the planning, administration, evaluation, and modification of treatment and instruction, including the use of physical measures, activities, and devices, for preventative and therapeutic purposes, including but not limited to dry needling; and the provision of consultative, educational, and other advisory services for the purpose of preventing or reducing the incidence and severity of physical disability, bodily malfunction, and pain.

(8) "Physical therapy aide" means a person who only performs designated and supervised physical therapy tasks. The physical therapy aide must receive direct supervision and must be directed on the premises at all times by a licensee. Physical therapy aides are not licensed under this chapter.

(9) "Trainee" means an individual who is approved for a traineeship.

(10) "Traineeship" means a period of activity during which a trainee works under the direct supervision of a licensed physical therapist who has practiced for not less than one year prior to assuming the supervisory role.

(11) "Training permit" means a valid and current certificate of registration issued by the board, which gives the person to whom it is issued authority to engage in practice through a traineeship prescribed thereon. (Ga. L. 1951, p. 175, § 1; Ga. L. 1962, p. 633, § 1; Ga. L. 1972, p. 388, § 3; Ga. L. 1980, p. 1053, § 1; Ga. L. 1986, p. 812, § 1;

Ga. L. 1992, p. 2434, § 1; Ga. L. 1997, p. 715, § 1; Ga. L. 2011, p. 592, § 1/HB 145.)

The 2011 amendment, effective July 1, 2011, inserted “, including but not limited to dry needling” near the end of paragraph (7).

JUDICIAL DECISIONS

Cited in *Lovelace v. Figure Salon, Inc.*, 179 Ga. App. 51, 345 S.E.2d 139 (1986).

OPINIONS OF THE ATTORNEY GENERAL

Judicial construction, not jury, defines “qualified physical therapist”. — In determining meaning of term “qualified physical therapist,” a court would be inclined to decide question in favor of judicial construction rather than determination by jury. 1969 Op. Att’y Gen. No. 69-483.

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 10.
ALR. — Right of corporation to engage in business, trade, or activity requiring license from public, 165 ALR 1098.

43-33-4. Creation of board.

There is created a State Board of Physical Therapy. (Ga. L. 1962, p. 633, § 2; Ga. L. 1972, p. 388, § 4; Ga. L. 1997, p. 715, § 1.)

43-33-5. Appointment of board members; terms; vacancies; removal.

The board shall consist of eight members, as provided in Code Section 43-33-6, each of whom shall be appointed by the Governor and confirmed by the Senate for a term of three years and until a successor is appointed and qualified. Vacancies on the board shall be filled by the Governor’s appointment of a successor to serve out the unexpired term. The Governor, after notice and opportunity for hearing, may remove any member of the board for neglect of duty, incompetence, revocation or suspension of license of those licensee members, or other dishonorable conduct. No person shall serve consecutively more than two full terms as a member of the board. (Ga. L. 1962, p. 633, § 2; Ga. L. 1972, p. 388, § 5; Ga. L. 1980, p. 1053, § 2; Ga. L. 1986, p. 812, § 2; Ga. L. 1992, p. 2434, § 2; Ga. L. 1997, p. 715, § 1.)

Law reviews. — For comment on *Rogers v. Medical Ass’n*, 244 Ga. 151, 259 S.E.2d 85 (1979), invalidating Georgia statute requiring Governor’s appointments to Composite State Board of Medical Examiners be made solely from nominees submitted by state medical society as an unconstitutional delegation of legislative authority to a private organization, see 29 Emory L.J. 1183 (1980).

43-33-6. Qualifications of board members.

To be eligible for appointment to the board, a person must be a resident of this state. Six members of the board shall be licensed as physical therapists under this chapter who have practiced or taught physical therapy for at least three years. At least one member shall be licensed and practicing as a physical therapist assistant for at least three years. The eighth member shall be appointed from the public at large and shall have no business connection whatsoever with the practice or profession of physical therapy. (Ga. L. 1962, p. 633, § 2; Ga. L. 1972, p. 388, § 6; Ga. L. 1980, p. 53, § 1; Ga. L. 1980, p. 1053, § 2; Ga. L. 1986, p. 812, § 3; Ga. L. 1992, p. 2434, § 3; Ga. L. 1997, p. 715, § 1.)

43-33-7. Conduct of business by telephone.

With the exception of hearings in contested cases, the board may conduct business in conference by telephone, provided that members of the board shall not receive compensation for business conducted in conference by telephone. (Ga. L. 1972, p. 388, § 7; Ga. L. 1980, p. 1053, § 3; Ga. L. 1997, p. 715, § 1.)

43-33-8. Reimbursement of board members.

Each member of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2. (Ga. L. 1972, p. 388, § 8; Ga. L. 1980, p. 1053, § 4; Ga. L. 1997, p. 715, § 1.)

43-33-9. (Effective until January 1, 2013. See note.) Division director as secretary of board; subpoena power; service of process and documents; official records as prima-facie evidence.

The division director shall be secretary of the board and shall perform such other administrative duties as may be prescribed by the board. In a contested case, the division director on behalf of the board shall have the power to subpoena, throughout the state, witnesses, designated documents, papers, books, accounts, letters, photographs, objects, or other tangible things. All legal process and all documents required by law to be served upon or filed with the board shall be served upon or filed with the division director at his or her office. All official records of the board or affidavits by the division director certifying the content of such records shall be prima-facie evidence of all matters required to be kept therein. (Ga. L. 1972, p. 388, § 9; Ga. L. 1997, p. 715, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2010, p. 266, § 36/SB 195.)

The 2010 amendment, effective May 20, 2010, deleted “in Atlanta” following “office” at the end of the third sentence.

Editor’s notes. — Code Section

43-33-9 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

43-33-9. (Effective January 1, 2013. See note.) Division director as secretary of board; subpoena power; service of process and documents.

The division director shall be secretary of the board and shall perform such other administrative duties as may be prescribed by the board. In a contested case, the division director on behalf of the board shall have the power to subpoena, throughout this state, witnesses, designated documents, papers, books, accounts, letters, photographs, objects, or other tangible things. All legal process and all documents required by law to be served upon or filed with the board shall be served upon or filed with the division director at his or her office. (Ga. L. 1972, p. 388, § 9; Ga. L. 1997, p. 715, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2010, p. 266, § 36/SB 195; Ga. L. 2011, p. 99, § 72/HB 24.)

The 2011 amendment, effective January 1, 2013, substituted “this state” for “the state” in the second sentence, and deleted the former last sentence which read: “All official records of the board or affidavits by the division director certifying the content of such records shall be prima-facie evidence of all matters required to be kept therein.” See editor’s note for applicability.

Editor’s notes. — Code Section 43-33-9 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

Ga. L. 2011, p. 99, § 101, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

43-33-10. General powers and duties of board.

In carrying out the provisions of this chapter, the board shall, in addition to the other powers conferred upon it under this chapter, have the power to:

- (1) Prepare or approve all examinations or applicants for licenses;
- (2) Determine the qualifications of and authorize the issuance of licenses to qualified physical therapists and physical therapist assistants;
- (3) Determine the qualifications for and approve educational programs that prepare physical therapists and physical therapist assistants for the purpose of determining qualifications of applicants for licensure;
- (4) Initiate investigations of alleged or suspected violations of the provisions of this chapter or other laws of this state pertaining to physical therapy and any rules and regulations adopted by the board.

For this purpose, any board member or authorized agent of the board shall have the power and right to enter and make reasonable inspection of any place where physical therapy is practiced;

(5) Conduct all hearings in contested cases according to Chapter 13 of Title 50, known as the "Georgia Administrative Procedure Act";

(6) Discipline any person licensed under this chapter, or refuse to grant, renew, or restore a license to any person upon any ground specified in this chapter;

(7) Adopt a seal, the imprint of which together with the authorized signature of either the division director or other member authorized by the board shall be effective to evidence its official acts;

(8) Establish licensing fees and maintain in the office of the division director a register of all persons holding a license and a record of all inspections made;

(9) Adopt and publish in print or electronically a code of ethics;

(10) Issue training permits; and

(11) Adopt such rules and regulations as shall be reasonably necessary for the enforcement and implementation of the provisions and purposes of this chapter and other laws of this state insofar as they relate to physical therapy. (Ga. L. 1951, p. 175, § 15; Ga. L. 1962, p. 633, § 2; Ga. L. 1972, p. 388, § 10; Ga. L. 1982, p. 1416, §§ 1, 10; Ga. L. 1983, p. 3, § 32; Ga. L. 1986, p. 812, § 4; Ga. L. 1992, p. 2434, § 4; Ga. L. 1997, p. 715, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted "in print or electronically" in paragraph (9).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, "under this chapter" was substituted for "hereunder" in paragraph (6).

Administrative rules and regulations. — Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia State Board of Physical Therapy, Chapter 490-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Physical therapist assistants. — Licensed physical therapist assistant must be supervised and directed by a licensed physical therapist, and the State Board of Physical Therapy presently is not autho-

rized to promulgate rules providing for disciplinary action against, or delineating the services which may be provided by, a physical therapy aide. 1989 Op. Att'y Gen. No. 89-46.

43-33-11. License required for physical therapists or physical therapist assistants; use of titles; limitation on scope of Code section.

A physical therapist shall display either the title “physical therapist” or the abbreviation “P.T.” on a name tag or other similar form of identification during times when such person is providing direct patient care. A physical therapist assistant shall display either the title “physical therapist assistant” or the abbreviation “P.T.A.” on a name tag or other similar form of identification during times when such person is providing direct patient care. A physical therapy aide shall be required to display the title “physical therapy aide” on a name tag or other similar form of identification during times when such person is assisting a licensee. No person shall practice as a physical therapist or as a physical therapist assistant nor hold himself or herself out as being able to practice as a physical therapist or as a physical therapist assistant or as providing physical therapy or use the initials P.T. or P.T.A. in conjunction therewith or use any word or title to induce the belief that he or she is engaged in the practice of physical therapy unless he or she holds a license and otherwise complies with the provisions of this chapter and the rules and regulations adopted by the board. Nothing in this Code section shall be construed as preventing or restricting the practice, services, or activities of:

(1) Any person licensed under any other law of this state who is engaged in the professional or trade practices properly conducted under the authority of such other licensing laws;

(2) Any person pursuing a course of study leading to a degree or certificate as a physical therapist or as a physical therapist assistant in an entry level educational program approved by the board, if such person is designated by a title indicating student status, is fulfilling work experiences required for the attainment of the degree or certificate, and is under the supervision of a licensed physical therapist;

(3) Any person enrolled in a course of study designed to develop advanced physical therapy skills when the physical therapy activities are required as part of an educational program sponsored by an educational institution approved by the board and are conducted under the supervision of a physical therapist licensed under this chapter. If such person provides physical therapy services outside the scope of the educational program, he or she shall then be required to be licensed in accordance with this chapter;

(4) A physical therapist licensed in another state or country or employed by the United States government conducting a teaching or clinical demonstration in connection with an academic or continuing education program;

(5) Any person employed as a physical therapist or as a physical therapist assistant by the United States government if such person provides physical therapy services solely under the direction or control of the employing organization. If such person shall engage in the practice of physical therapy or as a physical therapist assistant outside the course and scope of such employment, he or she shall then be required to be licensed in accordance with this chapter; or

(6) A person currently licensed in another state who is present in this state for treatment of a temporary sojourner only, said treatment in this state not to exceed a total of 60 days during any 12 month period. (Ga. L. 1951, p. 175, §§ 2, 14; Ga. L. 1964, p. 765, § 1; Ga. L. 1972, p. 388, § 12; Ga. L. 1982, p. 1416, §§ 2, 11; Ga. L. 1983, p. 3, § 32; Ga. L. 1992, p. 2434, § 5; Ga. L. 1993, p. 91, § 43; Ga. L. 1997, p. 715, § 1.)

Administrative rules and regulations. — Licensure requirements, Official Compilation of the Rules and Regulations

of the State of Georgia, Georgia State Board of Physical Therapy, Chapter 490-2.

JUDICIAL DECISIONS

Malpractice. — Physical therapists are “professionals” within the intent of O.C.G.A. § 9-11-9.1 requiring the affidavit of an expert to be filed with the com-

plaint in an action for professional malpractice. *Hodo v. General Hosps.*, 211 Ga. App. 6, 438 S.E.2d 378 (1993).

OPINIONS OF THE ATTORNEY GENERAL

Physical therapist assistants. — Licensed physical therapist assistant must be supervised and directed by a licensed physical therapist, and the State Board of Physical Therapy presently is not autho-

rized to promulgate rules providing for disciplinary action against, or delineating the services which may be provided by, a physical therapy aide. 1989 Op. Att’y Gen. No. 89-46.

RESEARCH REFERENCES

ALR. — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

43-33-12. Requirements for license to practice physical therapy.

A license to practice physical therapy shall be issued to any person who:

(1) Is a graduate of an educational program that prepares physical therapists and which is accredited by a recognized accrediting agency and approved by the board or, in the case of an applicant who has graduated from an educational program which prepares physical therapists conducted in a foreign country, has submitted, in a manner prescribed by the board, credentials approved by the board and who has further demonstrated the ability to speak, write, and understand the English language and has satisfactorily completed a three-month board approved traineeship under the supervision of a physical therapist licensed under this chapter;

(2) Has satisfactorily passed an examination prepared or approved by the board and has acquired any additional education and training required by the board; and

(3) Is not disqualified to receive a license under the provisions of Code Section 43-33-18 or subsection (a) of Code Section 43-1-19. (Ga. L. 1951, p. 175, § 8; Ga. L. 1972, p. 388, § 14; Ga. L. 1982, p. 1416, §§ 4, 12; Ga. L. 1983, p. 3, § 32; Ga. L. 1986, p. 812, § 5; Ga. L. 1992, p. 2434, § 6; Ga. L. 1997, p. 715, § 1; Ga. L. 2008, p. 1112, § 18/HB 1055.)

JUDICIAL DECISIONS

Standard of care owed patients by physical therapists. — Although a hospital owes to the hospital's patients only the duty of exercising ordinary care to furnish equipment and facilities reasonably suited to the uses intended and such as are in general use in hospitals in the area, this "locality rule" should not be applied to physical therapists employed by a hospital. Since hospitals across the state must employ physical therapists

who have received essentially the same level of training, given the same or similar circumstances the judgment of a physical therapist should not vary depending upon the location of his or her hospital. The standard of care which should be applied to a hospital's physical therapists is that ordinarily employed by the profession generally. *Wade v. John D. Archbold Mem. Hosp.*, 252 Ga. 118, 311 S.E.2d 836 (1984).

RESEARCH REFERENCES

ALR. — Licensing and regulation of practice of physical therapy, 8 ALR5th 825.

43-33-13. Requirements for license to practice as physical therapist assistant.

A license to practice as a physical therapist assistant shall be issued to any person who:

(1) Is a graduate of an educational program that prepares physical therapist assistants and which is accredited by a recognized accrediting agency and approved by the board or, in the case of an applicant

who has graduated from an educational program which prepares physical therapist assistants conducted in a foreign country, has submitted, in a manner prescribed by the board, credentials approved by the board and who has further demonstrated the ability to speak, write, and understand the English language and has satisfactorily completed a three-month board approved traineeship under the supervision of a physical therapist licensed under this chapter;

(2) Has satisfactorily passed an examination prepared or approved by the board; and

(3) Is not disqualified to receive a license under the provisions of Code Section 43-33-18 or subsection (a) of Code Section 43-1-19. (Ga. L. 1972, p. 388, § 13; Ga. L. 1982, p. 1416, §§ 3, 13; Ga. L. 1986, p. 812, § 6; Ga. L. 1992, p. 2434, § 7; Ga. L. 1997, p. 715, § 1.)

43-33-13.1. Physical therapy aide.

A physical therapy aide is one, other than a physical therapist or physical therapist assistant, who is employed to assist a physical therapist or a physical therapist assistant by performing only designated physical therapy tasks under direct supervision of a licensee as approved by the board by rule or regulation. (Code 1981, § 43-33-13.1, enacted by Ga. L. 1992, p. 2434, § 8; Ga. L. 1997, p. 715, § 1.)

Administrative rules and regulations. — Physical therapy aides, definition and requirements, Official Compila-

tion of the Rules and Regulations of the State of Georgia, Georgia State Board of Physical Therapy, Chapter 490-8.

43-33-14. Determining competence of applicants.

The board shall determine the competence of applicants to practice as physical therapists or as physical therapist assistants by any method or procedure which the board deems necessary to test the applicant's qualifications. (Ga. L. 1951, p. 175, § 7; Ga. L. 1962, p. 633, § 4; Ga. L. 1972, p. 388, § 17; Ga. L. 1982, p. 1416, §§ 7, 14; Ga. L. 1986, p. 812, § 7; Ga. L. 1997, p. 715, § 1.)

JUDICIAL DECISIONS

Cited in *Wade v. John D. Archbold*
Mem. Hosp., 252 Ga. 118, 311 S.E.2d 836
(1984).

43-33-15. Reciprocity; waiver of examination requirement for persons licensed in another state who meet certain qualifications.

The board may, in its discretion, waive the examination provided for in paragraph (2) of Code Section 43-33-12 and may, subject to the provisions under Code Sections 43-33-18 and 43-33-19, grant to a person licensed in another state or territory of the United States full privileges to engage in an equivalent practice authorized by this chapter to any person who has qualifications the board determines to be the substantial equivalent of the qualifications described under paragraph (1) of Code Section 43-33-12 and who is properly licensed under the laws of another state or territory of the United States; provided, however, that the license held by such person was issued after an examination which, in the judgment of the board, is the equivalent of the standards established by the board. In waiving the examination requirement, the board may require additional education or training. (Ga. L. 1951, p. 175, § 6; Ga. L. 1972, p. 388, § 16; Ga. L. 1982, p. 1416, §§ 6, 15; Ga. L. 1992, p. 2434, § 9; Ga. L. 1997, p. 715, § 1; Ga. L. 2008, p. 1112, § 19/HB 1055.)

Cross references. — Cooperation between Georgia and other states, T. 28, C. 6.

to Code Section 28-9-5, in 2008, “require” was substituted for “required” in the last sentence.

Code Commission notes. — Pursuant

JUDICIAL DECISIONS

Cited in Wade v. John D. Archbold
Mem. Hosp., 252 Ga. 118, 311 S.E.2d 836
(1984).

43-33-16. Expiration, renewal, and restoration of licenses; canceled licenses; continuing education.

All licenses shall expire biennially unless renewed. All applications for renewal of a license shall be filed with the division director prior to the expiration date, accompanied by the biennial renewal fee prescribed by the board. A license which has expired for failure of the holder to renew may only be restored after application and payment of the prescribed restoration fee within the time period established by the division director and provided the applicant meets such requirements as the board may establish by rule. Any license which has not been restored within such period following its expiration may not be renewed, restored, or reissued thereafter. The holder of such a canceled license may apply for and obtain a valid license only upon compliance with all relevant requirements for issuance of a new license. The board shall require no less than four hours of continuing education in order to

renew any license issued pursuant to this chapter. (Ga. L. 1951, p. 175, § 9; Ga. L. 1962, p. 633, § 5; Ga. L. 1972, p. 388, § 18; Ga. L. 1980, p. 1053, § 6; Ga. L. 1986, p. 812, § 8; Ga. L. 1992, p. 2434, § 10; Ga. L. 1997, p. 715, § 1; Ga. L. 2000, p. 1706, § 19.)

OPINIONS OF THE ATTORNEY GENERAL

Nonboard members may not be used to examine applicants. — Board is not given the authority to use nonboard members, whether former board members or not, to examine applicants as part of the oral examination procedure. 1980 Op. Att'y Gen. No. 80-26.

Discretion of board to restore licenses. — State Board of Physical Therapy may, in the board's discretion, require an individual whose license has been revoked by operation of law for failure to renew the license by the end of an established penalty period to comply with all relevant requirements for the issuance of a new license as a condition of reinstatement.

1984 Op. Att'y Gen. No. 84-64 (decided prior to 1992 amendment).

To the extent that O.C.G.A. § 43-1-19(g) and (l) are later legislative enactments than O.C.G.A. § 43-33-16 or O.C.G.A. § 43-33-18(c), those statutes would control in the case of a conflict. 1984 Op. Att'y Gen. No. 84-64 (decided prior to 1992 amendment).

Only actual conflict between O.C.G.A. §§ 43-33-16 and 43-1-19(g) and (l) relates to the discretion of the Board of Physical Therapy to restore a license and to impose conditions therefor. 1984 Op. Att'y Gen. No. 84-64 (decided prior to 1992 amendment).

43-33-17. Training permits.

(a) The board may issue a training permit to an applicant who is a graduate of an approved physical therapy program who is approved to take the physical therapy licensing examination or who has taken the examination but not yet received the examination results.

(b) The board may issue a training permit to a foreign trained applicant who is a graduate from a physical therapy program outside the United States and its territories and who is approved to take the physical therapy licensing examination.

(c) The board may issue a training permit to a reinstatement applicant whose license to practice as a physical therapist or license to practice as a physical therapist assistant has been expired for more than two years.

(d) The training permit shall allow the holder thereof to work only under the direct supervision of a physical therapist who has been approved by the board and has practiced for not less than one year prior to assuming the supervisory role.

(e) Training permits are governed by rules and regulations authorized under this chapter and approved by the board. (Ga. L. 1972, p. 388, § 15; Ga. L. 1980, p. 1053, § 5; Ga. L. 1982, p. 3, § 43; Ga. L. 1982, p. 1416, §§ 5, 16; Ga. L. 1986, p. 812, § 9; Ga. L. 1987, p. 3, § 43; Ga. L. 1990, p. 8, § 43; Ga. L. 1992, p. 2434, § 11; Ga. L. 1997, p. 715, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Requirements for issuance of temporary license without examination.

— If an applicant is applying for the first time as a physical therapist or physical therapy assistant or, alternatively, intends to practice on a temporary basis in the State of Georgia, then this applicant

may be issued a temporary license without examination if the applicant can otherwise qualify for licensure under either O.C.G.A. § 43-33-12 or O.C.G.A. § 43-33-13. 1980 Op. Att’y Gen. No. 80-10 (decided prior to 1992 amendment).

43-33-18. (Effective until January 1, 2013. See note.) Refusal to grant or restore licenses; discipline of licensees; suspension, revocation, or restriction of licenses; immunity for violation reporters.

(a) The board shall have authority to refuse to grant or restore a license to an applicant or to discipline a physical therapist or physical therapist assistant licensed under this chapter or any antecedent law upon a finding by the board that the licensee or applicant has:

(1)(A) Implemented or continued a program of physical therapy treatment without consultation with an appropriate licensed practitioner of the healing arts; except that a physical therapist may implement a program of physical therapy treatment without consultation with an appropriately licensed practitioner of the healing arts when:

(i) Services are provided for the purpose of fitness, wellness, or prevention that is not related to the treatment of an injury or ailment; or

(ii)(I) The patient was previously diagnosed and received treatment or services for that diagnosis and the patient returns to physical therapy within 60 days of discharge from physical therapy for problems and symptoms that are related to the initial referral to the physical therapist. In such a situation the physical therapist shall notify the original referral source of the return to physical therapy within five business days; and

(II) The physical therapist holds a master’s or doctorate degree from a professional physical therapy program that is accredited by a national accreditation agency recognized by the United States Department of Education and approved by the Georgia State Board of Physical Therapy or the physical therapist has completed at least two years of practical experience as a licensed physical therapist.

If after 90 days of initiating physical therapy services the physical therapist determines that no substantial progress has been made

with respect to the primary complaints of the patient, the physical therapist shall refer the patient to an appropriately licensed practitioner of the healing arts. If at any time the physical therapist has reason to believe that the patient has symptoms or conditions that require treatment or services beyond the scope of practice of the physical therapist, the physical therapist shall refer the patient to an appropriately licensed practitioner of the healing arts; or

(B) In the case of practice as a physical therapist assistant, practiced other than under the supervision and direction of a licensed physical therapist;

(2) Displayed an inability or has become unable to practice as a physical therapist or as a physical therapist assistant with reasonable skill and safety to patients by reason of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition:

(A) In enforcing this paragraph the board may, upon reasonable grounds, require a licensee or applicant to submit to a mental or physical examination by an appropriate practitioner of the healing arts designated by the board. The expense of such mental or physical examination shall be borne by the licensee or applicant. The results of such examination shall be admissible in any hearing before the board, notwithstanding any claim of privilege under a contrary rule of law or statute, including, but not limited to Code Section 24-9-21. Every person who shall accept the privilege of practicing physical therapy in this state or who shall file an application for a license to practice physical therapy in this state shall be deemed to have given his or her consent to submit to such mental or physical examination and to have waived all objections to the admissibility of the results in any hearing before the board upon the grounds that the same constitutes a privileged communication. If a licensee or applicant fails to submit to such an examination when properly directed to do so by the board, unless such failure was due to circumstances beyond his or her control, the board may enter a final order upon proper notice, hearing, and proof of such refusal. Any licensee or applicant who is prohibited from practicing physical therapy under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate to the board that he or she can resume or begin the practice of physical therapy with reasonable skill and safety to patients;

(B) For the purposes of this paragraph, the board may, upon reasonable grounds, obtain any and all records relating to the mental or physical condition of a licensee or applicant, including psychiatric records; and such records shall be admissible in any

hearing before the board, notwithstanding any privilege under a contrary rule of law or statute, including, but not limited to, Code Section 24-9-21. Every person who shall accept the privilege of practicing physical therapy in this state or who shall file an application to practice physical therapy in this state shall be deemed to have given his or her consent to the board's obtaining any such records and to have waived all objections to the admissibility of such records in any hearing before the board upon the grounds that the same constitute a privileged communication; and

(C) If any licensee or applicant could, in the absence of this paragraph, invoke a privilege to prevent the disclosure of the results of the examination provided for in subparagraph (A) of this paragraph or the records relating to the mental or physical condition of such licensee or applicant obtained pursuant to subparagraph (B) of this paragraph, all such information shall be received by the board in camera and shall not be disclosed to the public, nor shall any part of the record containing such information be used against any licensee or applicant in any other type of proceeding;

(3) Been convicted of a felony or crime involving moral turpitude in the courts of this state, the United States, or the conviction of an offense in another jurisdiction which if committed in this state would be deemed a felony. For the purpose of this Code section, a "conviction" shall include a finding or verdict of guilty, a plea of guilty, or a plea of nolo contendere in a criminal proceeding regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon pursuant to the provisions of Code Sections 42-8-60 through 42-8-64, relating to first offenders, or any comparable rule or statute;

(4) Knowingly made misleading, deceptive, untrue, or fraudulent representations to a patient, consumer, or other person or entity in connection with the practice of physical therapy or in any document connected therewith; practiced fraud or deceit or intentionally made any false statement in obtaining or attempting to obtain a license to practice physical therapy or as a physical therapist assistant; or made a false or deceptive biennial registration with the board;

(5) Practiced physical therapy contrary to this Code section or to the rules and regulations of the board; knowingly aided, assisted, procured, or advised any person to practice physical therapy contrary to this Code section or to the rules and regulations of the board; or knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person to practice physical therapy;

(6) Engaged in any unprofessional, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or

practice need not have resulted in actual injury to any person; unprofessional conduct shall also include any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing physical therapy practice or the failure to comply with the code of ethics of the board;

(7) Failed to report to the board any act or omission of a licensee or applicant or any other person which violates the provisions of this subsection; or

(8) Divided fees or agreed to divide fees received for professional services with any person, firm, association, corporation, or other entity for bringing or referring a patient.

(b)(1) When the board finds that any person is unqualified to be granted a license or finds that any person should be disciplined pursuant to subsection (a) of this Code section, the board may take any one or more of the following actions:

(A) Refuse to grant or restore a license to an applicant;

(B) Administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the licensee;

(C) Suspend any license for a definite period;

(D) Limit or restrict any license;

(E) Revoke any license;

(F) Condition the penalty or withhold formal disposition, upon the physical therapist's, physical therapist assistant's, or other person's submission to the care, counseling, or treatment of physicians or other professional persons, and the completion of such care, counseling, or treatment, as directed by the board; or

(G) Impose a fine not to exceed \$500.00 for each violation of law, rule, or regulation of the board.

(2) In addition to or in conjunction with the actions enumerated pursuant to paragraph (1) of this subsection the board may make a finding adverse to the licensee or applicant but withhold imposition of judgment and penalty, or it may impose the judgment and penalty but suspend enforcement thereof and place the licensee or applicant on probation, which probation may be vacated upon noncompliance with such reasonable terms as the board may impose.

(c) In its discretion, the board may restore and reissue a license issued under this chapter or any antecedent law and, as a condition thereof, it may impose any disciplinary or corrective measure provided in this chapter.

(d) A person, firm, corporation, association, authority, or other entity shall be immune from civil and criminal liability for reporting the acts or omissions of a licensee or applicant which violate the provisions of subsection (a) of this Code section or any other provision of law relating to a licensee's or applicant's fitness to practice as a physical therapist or as a physical therapist assistant, if such report is made in good faith without fraud or malice. Any person who testifies without fraud or malice before the board in any proceeding involving a violation of the provisions of subsection (a) of this Code section or any other law relating to a licensee's or applicant's fitness to practice as a physical therapist or as a physical therapist assistant shall be immune from civil and criminal liability for so testifying. (Ga. L. 1951, p. 175, § 10; Ga. L. 1972, p. 388, § 20; Ga. L. 1982, p. 1416, §§ 8, 17; Ga. L. 1992, p. 2434, § 12; Ga. L. 1993, p. 91, § 43; Ga. L. 1997, p. 715, § 1; Ga. L. 2006, p. 501, § 1/HB 801; Ga. L. 2008, p. 324, § 43/SB 455.)

Editor's notes. — Code Section 43-33-18 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

OPINIONS OF THE ATTORNEY GENERAL

Discretion of board to restore licenses. — State Board of Physical Therapy may, in the board's discretion, require an individual whose license has been revoked by operation of law for failure to renew the license by the end of an established penalty period to comply with all relevant requirements for the issuance of a new license as a condition of reinstatement. 1984 Op. Att'y Gen. No. 84-64.

To the extent that O.C.G.A. § 43-1-19(g) and (l) are later legislative enactments than O.C.G.A. § 43-33-16 or

O.C.G.A. § 43-33-18(c), those statutes would control in the case of a conflict. 1984 Op. Att'y Gen. No. 84-64.

Physical therapist assistants. — Licensed physical therapist assistant must be supervised and directed by a licensed physical therapist, and the State Board of Physical Therapy presently is not authorized to promulgate rules providing for disciplinary action against, or delineating the services which may be provided by a physical therapy aide. 1989 Op. Att'y Gen. No. 89-46.

RESEARCH REFERENCES

ALR. — Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 ALR 1388. Liability for injuries or death resulting from physical therapy, 53 ALR3d 1250.

43-33-18. (Effective January 1, 2013. See note.) Refusal to grant or restore licenses; discipline of licensees; suspension, revocation, or restriction of licenses; immunity for violation reporters.

(a) The board shall have authority to refuse to grant or restore a license to an applicant or to discipline a physical therapist or physical

therapist assistant licensed under this chapter or any antecedent law upon a finding by the board that the licensee or applicant has:

(1)(A) Implemented or continued a program of physical therapy treatment without consultation with an appropriate licensed practitioner of the healing arts; except that a physical therapist may implement a program of physical therapy treatment without consultation with an appropriately licensed practitioner of the healing arts when:

(i) Services are provided for the purpose of fitness, wellness, or prevention that is not related to the treatment of an injury or ailment; or

(ii)(I) The patient was previously diagnosed and received treatment or services for that diagnosis and the patient returns to physical therapy within 60 days of discharge from physical therapy for problems and symptoms that are related to the initial referral to the physical therapist. In such a situation the physical therapist shall notify the original referral source of the return to physical therapy within five business days; and

(II) The physical therapist holds a master's or doctorate degree from a professional physical therapy program that is accredited by a national accreditation agency recognized by the United States Department of Education and approved by the Georgia State Board of Physical Therapy or the physical therapist has completed at least two years of practical experience as a licensed physical therapist.

If after 90 days of initiating physical therapy services the physical therapist determines that no substantial progress has been made with respect to the primary complaints of the patient, the physical therapist shall refer the patient to an appropriately licensed practitioner of the healing arts. If at any time the physical therapist has reason to believe that the patient has symptoms or conditions that require treatment or services beyond the scope of practice of the physical therapist, the physical therapist shall refer the patient to an appropriately licensed practitioner of the healing arts; or

(B) In the case of practice as a physical therapist assistant, practiced other than under the supervision and direction of a licensed physical therapist;

(2) Displayed an inability or has become unable to practice as a physical therapist or as a physical therapist assistant with reasonable skill and safety to patients by reason of illness, use of alcohol,

drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition:

(A) In enforcing this paragraph the board may, upon reasonable grounds, require a licensee or applicant to submit to a mental or physical examination by an appropriate practitioner of the healing arts designated by the board. The expense of such mental or physical examination shall be borne by the licensee or applicant. The results of such examination shall be admissible in any hearing before the board, notwithstanding any claim of privilege under a contrary rule of law or statute, including, but not limited to Code Section 24-5-501. Every person who shall accept the privilege of practicing physical therapy in this state or who shall file an application for a license to practice physical therapy in this state shall be deemed to have given his or her consent to submit to such mental or physical examination and to have waived all objections to the admissibility of the results in any hearing before the board upon the grounds that the same constitutes a privileged communication. If a licensee or applicant fails to submit to such an examination when properly directed to do so by the board, unless such failure was due to circumstances beyond his or her control, the board may enter a final order upon proper notice, hearing, and proof of such refusal. Any licensee or applicant who is prohibited from practicing physical therapy under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate to the board that he or she can resume or begin the practice of physical therapy with reasonable skill and safety to patients;

(B) For the purposes of this paragraph, the board may, upon reasonable grounds, obtain any and all records relating to the mental or physical condition of a licensee or applicant, including psychiatric records; and such records shall be admissible in any hearing before the board, notwithstanding any privilege under a contrary rule of law or statute, including, but not limited to, Code Section 24-5-501. Every person who shall accept the privilege of practicing physical therapy in this state or who shall file an application to practice physical therapy in this state shall be deemed to have given his or her consent to the board's obtaining any such records and to have waived all objections to the admissibility of such records in any hearing before the board upon the grounds that the same constitute a privileged communication; and

(C) If any licensee or applicant could, in the absence of this paragraph, invoke a privilege to prevent the disclosure of the results of the examination provided for in subparagraph (A) of this paragraph or the records relating to the mental or physical condition of such licensee or applicant obtained pursuant to subpara-

graph (B) of this paragraph, all such information shall be received by the board in camera and shall not be disclosed to the public, nor shall any part of the record containing such information be used against any licensee or applicant in any other type of proceeding;

(3) Been convicted of a felony or crime involving moral turpitude in the courts of this state, the United States, or the conviction of an offense in another jurisdiction which if committed in this state would be deemed a felony. For the purpose of this Code section, a "conviction" shall include a finding or verdict of guilty, a plea of guilty, or a plea of nolo contendere in a criminal proceeding regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon pursuant to the provisions of Code Sections 42-8-60 through 42-8-64, relating to first offenders, or any comparable rule or statute;

(4) Knowingly made misleading, deceptive, untrue, or fraudulent representations to a patient, consumer, or other person or entity in connection with the practice of physical therapy or in any document connected therewith; practiced fraud or deceit or intentionally made any false statement in obtaining or attempting to obtain a license to practice physical therapy or as a physical therapist assistant; or made a false or deceptive biennial registration with the board;

(5) Practiced physical therapy contrary to this Code section or to the rules and regulations of the board; knowingly aided, assisted, procured, or advised any person to practice physical therapy contrary to this Code section or to the rules and regulations of the board; or knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person to practice physical therapy;

(6) Engaged in any unprofessional, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice need not have resulted in actual injury to any person; unprofessional conduct shall also include any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing physical therapy practice or the failure to comply with the code of ethics of the board;

(7) Failed to report to the board any act or omission of a licensee or applicant or any other person which violates the provisions of this subsection; or

(8) Divided fees or agreed to divide fees received for professional services with any person, firm, association, corporation, or other entity for bringing or referring a patient.

(b)(1) When the board finds that any person is unqualified to be granted a license or finds that any person should be disciplined

pursuant to subsection (a) of this Code section, the board may take any one or more of the following actions:

(A) Refuse to grant or restore a license to an applicant;

(B) Administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the licensee;

(C) Suspend any license for a definite period;

(D) Limit or restrict any license;

(E) Revoke any license;

(F) Condition the penalty or withhold formal disposition, upon the physical therapist's, physical therapist assistant's, or other person's submission to the care, counseling, or treatment of physicians or other professional persons, and the completion of such care, counseling, or treatment, as directed by the board; or

(G) Impose a fine not to exceed \$500.00 for each violation of law, rule, or regulation of the board.

(2) In addition to or in conjunction with the actions enumerated pursuant to paragraph (1) of this subsection the board may make a finding adverse to the licensee or applicant but withhold imposition of judgment and penalty, or it may impose the judgment and penalty but suspend enforcement thereof and place the licensee or applicant on probation, which probation may be vacated upon noncompliance with such reasonable terms as the board may impose.

(c) In its discretion, the board may restore and reissue a license issued under this chapter or any antecedent law and, as a condition thereof, it may impose any disciplinary or corrective measure provided in this chapter.

(d) A person, firm, corporation, association, authority, or other entity shall be immune from civil and criminal liability for reporting the acts or omissions of a licensee or applicant which violate the provisions of subsection (a) of this Code section or any other provision of law relating to a licensee's or applicant's fitness to practice as a physical therapist or as a physical therapist assistant, if such report is made in good faith without fraud or malice. Any person who testifies without fraud or malice before the board in any proceeding involving a violation of the provisions of subsection (a) of this Code section or any other law relating to a licensee's or applicant's fitness to practice as a physical therapist or as a physical therapist assistant shall be immune from civil and criminal liability for so testifying. (Ga. L. 1951, p. 175, § 10; Ga. L. 1972, p. 388, § 20; Ga. L. 1982, p. 1416, §§ 8, 17; Ga. L. 1992, p. 2434, § 12; Ga. L. 1993, p. 91, § 43; Ga. L. 1997, p. 715, § 1; Ga. L. 2006, p.

501, § 1/HB 801; Ga. L. 2008, p. 324, § 43/SB 455; Ga. L. 2011, p. 99, § 73/HB 24.)

The 2011 amendment, effective January 1, 2013, substituted “Code Section 24-5-501” for “Code Section 24-9-21” at the end of the third sentence of subparagraph (a)(2)(A) and at the end of the first sentence of subparagraph (a)(2)(B). See editor’s note for applicability.

Editor’s notes. — Code Section 43-33-18 is set out twice in this Code. The

first version is effective until January 1, 2013, and the second version becomes effective on that date.

Ga. L. 2011, p. 99, § 101, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

43-33-19. Unlicensed practice as constituting public nuisance; injunctions.

The practice of physical therapy is declared to be an activity affecting the public interest and involving the health, safety, and welfare of the public. Such practice when engaged in by a person who is not licensed is declared to be harmful to the public health, safety, and welfare. The board or the district attorney of the circuit where such unlicensed practice exists, or any person or organization having an interest therein, may bring a petition to restrain and enjoin such unlicensed practice in the superior court of the county where such unlicensed person resides. It shall not be necessary in order to obtain an injunction under this Code section to allege or prove that there is no adequate remedy at law, or to allege or prove any special injury. (Ga. L. 1962, p. 633, § 6; Ga. L. 1972, p. 388, § 21; Ga. L. 1982, p. 1416, §§ 9, 18; Ga. L. 1997, p. 715, § 1.)

43-33-20. Penalty.

Any person convicted of violating this chapter shall be guilty of a misdemeanor. (Ga. L. 1951, p. 175, § 17; Ga. L. 1972, p. 388, § 22; Ga. L. 1997, p. 715, § 1.)

43-33-21. Termination.

Repealed by Ga. L. 1992, p. 3137, § 26, effective July 1, 1992.

Editor’s notes. — This Code section was based on Ga. L. 1981, Ex. Sess., p. 8; Ga. L. 1986, p. 812, § 10 and Ga. L. 1992, p. 2434, § 14.

CHAPTER 34

PHYSICIANS, ACUPUNCTURE, PHYSICIAN ASSISTANTS, CANCER AND GLAUCOMA TREATMENT, RESPIRATORY CARE, CLINICAL PERFUSIONISTS, AND ORTHOTICS AND PROSTHETICS PRACTICE

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43-34-143.	(For effective date of repeal, see note.) Powers and duties of board.
43-34-144.	(For effective date of repeal, see note.) Requirements for certification; supervision.
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43-34-147.	(For effective date of repeal, see note.) Temporary permits.
43-34-148.	(For effective date of repeal, see note.) Reciprocity.
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43-34-150.	(For effective date of repeal, see note.) Respiratory care advisory committee.
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43-34-152.	(For effective date of repeal, see note.) "Georgia Administrative Procedure Act" applicable.

Article 7

Clinical Perfusionist Licensure

43-34-170.	Short title.
43-34-171.	Definitions.
43-34-172.	Powers and responsibilities of board.
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Orthotics and Prosthetics Practice		43-34-246.	(For effective date, see note.) Sanctions.
43-34-190.	Short title.	43-34-247.	(For effective date, see note.) Petition to restrain or enjoin unlicensed cosmetic laser practitioner.
43-34-191.	Findings of General Assembly.	43-34-248.	(For effective date, see note.) Agreement with consulting physician.
43-34-192.	Definitions.	43-34-249.	(For effective date, see note.) Informed consent.
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43-34-194.	Application for original license.	43-34-250.	(For effective date, see note.) Advisory committee.
43-34-195.	Qualifications for license.	43-34-251.	(For effective date, see note.) Prohibited activities.
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43-34-240.	(For effective date, see note.) Short title.		

Cross references. — Certified emergency medical technicians, certified cardiac technicians, § 31-11-50 et seq. Regulation of operation of clinical laboratories, T. 31, C. 22. Regulation of practice of midwifery, T. 31, C. 26. Physicians for rural areas assistance, T. 31, C. 34. Essential rural health care provider access, T. 33, C. 20B. Discrimination against licensed physicians by state agencies, public officials, in suggestions or recommen-

dations for visual care, § 45-11-9. Authorization of licensed physicians or pathologists to conduct post-mortem examinations or autopsies, § 45-16-22.

Editor's notes. — By resolution (Ga. L. 1983, p. 590), the General Assembly directed the Composite State Board of Medical Examiners (now Georgia Composite Medical Board) to develop and adopt rules and regulations to curb the abuse of prescription amphetamine and ampheta-

mine-like drugs for the treatment of obesity and other nonrelated acceptable medical treatments.

Administrative rules and regulations. — Administration, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board for Physician Workforce, Chapter 195-1 et seq.

Law reviews. — For article, “The Doctor and the Law in Georgia,” see 13 Ga. B.J. 13 (1950). For article, “Controlling Conflicts of Interest in the Doctor-Patient Relationship: Lessons from *Moore v. Re-*

gents of the University of California,” see 42 Mercer L. Rev. 989 (1991).

For comment, “The Psychotherapist-Client Testimonial Privilege: Defining the Professional Involved,” see 34 Emory L.J. 777 (1985). For comment, “*Moore v. Regents of the University of California: Insufficient Protection of Patients’ Rights in the Biotechnological Market*,” see 25 Ga. L. Rev. 489 (1991). For comment, “Public Health vs. Patient Rights: Reconciling Informed Consent with HPR Vaccination,” see 58 Emory L.J. 761 (2009).

JUDICIAL DECISIONS

Physician’s standard of care, not cure, determines right to recover for services. — Physician has the professional duty to provide a reasonable degree of care and skill, and the physician’s right to recover for services depends on whether the physician met this standard rather than whether a cure was effected. *Yeates*

v. Boyd, 50 Ga. App. 331, 177 S.E. 921 (1935).

Cited in *Glover v. Southern Bell Tel. & Tel. Co.*, 132 Ga. App. 74, 207 S.E.2d 584 (1974); *Cobb County-Kennestone Hosp. Auth. v. Prince*, 242 Ga. 139, 249 S.E.2d 581 (1978); *McFarlin v. Taylor*, 187 Ga. App. 54, 365 S.E.2d 330 (1988).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 39 Am. Jur. 2d, Health, §§ 1 et seq., 26 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

Am. Jur. Proof of Facts. — Denial of Hospital Staff Privileges, 1 POF2d 65.

Hospital’s Failure to Supervise Private Physician Using Hospital Facilities, 6 POF2d 647.

Hospital Liability for Negligent Selection of Staff Physician, 14 POF3d 433.

Hospital Liability for Negligent Retention of Staff Physician, 15 POF3d 181.

Liability of Physician for Improper Referral of Patients to a Medical Care Facility in Which Physician Has a Financial Interest, 61 POF3d 245.

Am. Jur. Trials. — Physician’s Countersuits, 35 Am. Jur. Trials 225.

Cosmetic Silicone Breast Implant Litigation, 55 Am. Jur. Trials 1.

Gynecological Malpractice Litigation, 64 Am. Jur. Trials 1.

Cardiological Malpractice Litigation, 68 Am. Jur. Trials 151.

Oncology Malpractice Litigation, 73 Am. Jur. Trials 119.

Diet Pill Litigation: The Fen-Phen Debacle, 73 Am. Jur. Trials 485.

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Cosmetic Liposuction Malpractice Litigation, 80 Am. Jur. Trials 1.

Hair Transplantation Malpractice Litigation, 90 Am. Jur. Trials 99.

Litigating Hip Replacement Malpractice and Product Liability Cases, 98 Am. Jur. Trials 1.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 39A C.J.S., Health and Environment, §§ 3 et seq., 37 et seq., 48 et seq. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees,

§ 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

Constitutionality of statute prescribing conditions of practicing medicine or surgery as affected by question of discrimination against particular school or method, 42 ALR 1342; 54 ALR 600.

Classes of persons within term “physician” in rule as to privileged communications, 68 ALR 176.

Construction, as regards kind or character of treatment, of restrictive medical or surgical license, 86 ALR 623.

Rights of patient or employer and physician, surgeon or dentist, respectively, in respect of X-ray negative or prints, 100 ALR 551.

Ability to pay as factor in determining reasonableness of charge of physician or surgeon, 97 ALR2d 1232.

Regulation of practice of acupuncture, 17 ALR4th 964.

Standard of care owed to patient by medical specialist as determined by local, “like community,” state, national, or other standards, 18 ALR4th 603.

Use, in attorney or physician disciplinary proceeding, of evidence obtained by wrongful police action, 20 ALR4th 546.

Medical malpractice: instrument breaking in course of surgery or treatment, 20 ALR4th 1179.

Criticism or disparagement of physician’s or dentist’s character, competence, or conduct as defamation, 38 ALR4th 836.

Defamation of psychiatrist, psychologist, or counselor, 38 ALR4th 874.

Tort liability of medical society or professional association for failure to discipline or investigate negligent or otherwise incompetent medical practitioner, 72 ALR4th 1148.

Liability of osteopath for medical malpractice, 73 ALR4th 24.

“Dual capacity doctrine” as basis for employee’s recovery for medical malpractice from company medical personnel, 73 ALR4th 115.

Liability of chiropractors and other drugless practitioners for medical malpractice, 77 ALR4th 273.

Physicians’ and surgeons’ liens, 39 ALR5th 787.

ARTICLE 1

GEORGIA COMPOSITE MEDICAL BOARD

Cross references. — Safe Medications Practice Act, T. 26, C. 4, A. 13.

43-34-1. Definitions.

As used in this chapter, the term:

(1) “Board” means the Georgia Composite Medical Board.

(2) “Physician” means a person licensed to practice medicine pursuant to Article 2 of this chapter.

(3) “To practice medicine,” “the practice of medicine,” or “practicing medicine” shall have the same meaning as in paragraph (3) of Code Section 43-34-21. (Code 1981, § 43-34-1, enacted by Ga. L. 2009, p. 859, § 1/HB 509.)

Effective date. — This Code section became effective July 1, 2009.

Editor’s notes. — This Code section formerly pertained to persons authorized

to perform surgery or other invasive procedures. The former Code section was based on Ga. L. 1950, p. 168, §§ 10, 14, 15; Ga. L. 1956, p. 36, §§ 2, 3, 4; Ga. L. 1981,

Ex. Sess., p. 8; and Ga. L. 1992, p. 2062, § 2, and was repealed by Ga. L. 1993, p. 349, § 1, effective April 5, 1993.

43-34-2. Creation of board; members; physician assistants advisory committee; review of qualifications.

(a) A board is established to be known as the Georgia Composite Medical Board. The board shall be composed of 15 members, all of whom shall be citizens of the United States and residents of this state. All appointments to the board shall be made by the Governor and confirmed by the Senate.

(b) Thirteen of the members shall be actively practicing physicians of integrity and ability and shall hold unrestricted licenses to practice medicine in this state. Eleven of the 13 physician members shall be graduates of reputable medical schools conferring the M.D. degree; the other two physician members shall be graduates of reputable osteopathic medical schools conferring the D.O. degree. All of the physician members shall have been engaged in the active practice of their profession within this state for a period of at least five years prior to their appointment. Any vacancy occurring in a post held by a holder of the D.O. degree shall be filled by a D.O. and any vacancy occurring in a post held by an M.D. degree shall be filled by an M.D.

(c) The fourteenth and fifteenth members of the board shall have no connection whatsoever with the practice of medicine and may vote only on matters relating to administration and policy which do not directly relate to practical and scientific examination of physicians in this state.

(d) Any member of the board may be removed from his or her position and generate an open position on the board:

(1) By a majority vote of the members of the board if a member of the board misses three or more consecutive meetings or misses more than one-third of all meetings including meetings conducted by teleconference, without a valid medical reason or reasons deemed excusable, which removal shall not be effective unless approved by the Governor; or

(2) By the Governor if the board member:

(A) Has willfully neglected his or her duty as a board member;

(B) Has been convicted of a crime involving moral turpitude;

(C) Has been convicted of a felony;

(D) Is no longer in the active practice of medicine, if a physician member;

(E) Is no longer a resident of the State of Georgia; or

(F) Has received any restriction of his or her medical license in Georgia or any other state, if a physician member.

(e)(1) The board shall appoint a Physician Assistants Advisory Committee composed of four physicians, at least two of whom shall be members of the board, and four licensed physician assistants, who shall each serve for terms of office of two years and until their successors are appointed and qualified. The committee shall review matters to come before the board which relate to physician assistants, including but not limited to applicants for physician assistant licensure and relicensure and education requirements therefor, and proposed board regulations concerning physician assistants. The committee shall periodically make recommendations to the board regarding matters reviewed. Each member of the advisory committee shall be entitled to the same expense allowances, mileage allowances, and reimbursement as members of the board as provided for in this chapter.

(2) The committee shall appoint a physician assistant in an advisory capacity to the board. The advisory person shall serve at the pleasure of the committee as an ex officio adviser to the board in all matters relating to physician assistants and shall share in the privileges and benefits of the board without a vote.

(f) The board shall review applicants' qualifications for licensure, certification, or permitting pursuant to this chapter.

(g) Reserved. (Ga. L. 1913, p. 101, § 2; Ga. L. 1918, p. 173, § 1; Code 1933, § 84-902; Ga. L. 1963, p. 285, § 1; Ga. L. 1970, p. 301, § 2; Ga. L. 1971, p. 689, § 1; Ga. L. 1974, p. 1156, § 2; Ga. L. 1977, p. 334, § 1; Ga. L. 1979, p. 382, §§ 1, 2; Code 1981, § 43-34-21; Ga. L. 1982, p. 2266, § 3; Ga. L. 1983, p. 3, § 32; Ga. L. 1984, p. 1465, § 1; Ga. L. 1986, p. 304, § 1; Ga. L. 1990, p. 1903, § 10; Ga. L. 1992, p. 1153, § 1; Ga. L. 1992, p. 2062, § 3; Ga. L. 1997, p. 935, § 1; Ga. L. 1999, p. 296, § 25; Code 1981, § 43-34-2, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509; Ga. L. 2010, p. 543, § 1/SB 252.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-21 as Code Section 43-34-2; in subsection (a), substituted "Georgia Composite Medical Board" for "Composite State Board of Medical Examiners" at the end of the first sentence and substituted "The board shall be composed of 15 members, all of whom" for "All members of the board" at the beginning of the second sentence; in subsection (b), in the first sentence, substituted "Thirteen" for

"Twelve" at the beginning, inserted "actively", substituted "hold unrestricted licenses" for "be duly licensed", and inserted "medicine", in the second sentence, substituted "Eleven" for "Ten" at the beginning, substituted "13" for "12" and inserted "medical", in the third sentence, added "prior to their appointment" at the end, and, in the last sentence, substituted "and any vacancy occurring in a post held by an M.D. degree shall be filled by an M.D." for "from the state at large" at the

end; rewrote subsections (c) and (d); in subsection (e), substituted "physician" for "physician's" throughout the subsection, and, in paragraph (e)(1), substituted "Physician" for "Physician's" at the beginning of the first sentence and substituted "for in this chapter" for "for in subsection (f) of Code Section 43-1-2" at the end of the last sentence; substituted the present provisions of subsection (f) for the former provisions which read: "The board shall examine applicants to test their qualifications to practice medicine."; deleted former subsection (g); and redesignated former subsection (h) as present subsection (g).

The 2010 amendment, effective July 1, 2010, reserved subsection (g), which read: "The board shall have the authority to contract with medical associations or other professionally qualified organizations to conduct impaired physicians programs."

Editor's notes. — This Code section formerly pertained to termination. The former Code section was based on Ga. L. 1982, p. 2266, §§ 1, 2 and Ga. L. 1988, p. 530, § 7, and was repealed by Ga. L. 1992, p. 3137, § 27, effective July 1, 1992.

Ga. L. 1999, p. 296, § 27, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 1999, except that Sections 12, 13, and 25 of this Act and any other provisions of this Act relating to the transfer of the Composite State Board of Medical Examiners from the jurisdiction of the Secretary of State shall not become effective upon July 1, 1999, if the Governor by executive order issued before that date determines such transfer to be impracticable on that date, in which event those sections and provisions shall become effective upon the effective date specified in that executive order but no later than July 1, 2000." No such executive order was issued.

Law reviews. — For comment on *Rogers v. Medical Ass'n*, 244 Ga. 151, 259 S.E.2d 85 (1979), invalidating Georgia statute requiring Governor's appointments to Composite State Board of Medical Examiners be made solely from nominees submitted by state medical society as an unconstitutional delegation of legislative authority to a private organization, see 29 Emory L.J. 1183 (1980).

JUDICIAL DECISIONS

Board has such implied powers only as are reasonably necessary to execute express powers conferred. *Bentley v. State Bd. of Medical Exmrs.*, 152 Ga. 836, 111 S.E. 379 (1922).

Immunity of members from personal liability. — Members of the board were acting within their jurisdiction in connection with summary suspension of a

medical doctor's license to practice medicine, including the suspension of the doctor's prescription privileges, and a suit against the members in their individual capacities was barred by absolute immunity. *Howard v. Miller*, 870 F. Supp. 340 (N.D. Ga. 1994).

Cited in *Morton v. Stewart*, 153 Ga. App. 636, 266 S.E.2d 230 (1980).

OPINIONS OF THE ATTORNEY GENERAL

Limitation on board's delegation of powers. — Composite State Board of Medical Examiners (now Georgia Composite Medical Board) may not lawfully

enter into an agreement to confer the board's powers upon private parties. 1973 Op. Att'y Gen. No. 73-127.

RESEARCH REFERENCES

ALR. — Disqualification, for bias or interest, of member of occupation or pro-

fession sitting in license revocation proceeding, 97 ALR2d 1210.

43-34-3. Terms of office; representation of geographic regions; vacancies.

(a) The members of the Composite State Board of Medical Examiners, now known as the Georgia Composite Medical Board, in office on June 30, 2009, shall continue to serve out their respective terms and until their respective successors are appointed and qualified. The two new board members added as of July 1, 2009, pursuant to Code Section 43-34-2 shall be appointed by the Governor to serve as members of the board for terms of office beginning on July 1, 2009. The terms of office of the two new members shall be for two years and three years, respectively, with the Governor to specify the initial term of office for each new member at the time of his or her appointment. Upon the expiration of such initial terms, successors to such members of the board whose terms of office expire shall serve for terms of four years each.

(b) Terms of office of members of the board shall be four years. Members of the board shall serve for the terms specified and until their respective successors are appointed and qualified. All reappointments and new appointments shall be made so that the various geographic regions of the state shall be represented. Any vacancy that may occur in the board as a result of death, resignation, relocation from the state, or other cause shall be filled for the unexpired term in the same manner as regular appointments are made. (Ga. L. 1909, p. 123, § 1; Ga. L. 1913, p. 101, § 3; Ga. L. 1918, p. 173, § 3; Code 1933, §§ 84-903, 84-1201; Ga. L. 1939, p. 226, § 1; Ga. L. 1963, p. 285, § 2; Ga. L. 1970, p. 301, § 3; Ga. L. 1971, p. 689, § 1; Ga. L. 1979, p. 382, § 3; Code 1981, § 43-34-22; Ga. L. 1997, p. 935, § 1.1; Ga. L. 1998, p. 128, § 43; Ga. L. 1999, p. 296, § 12; Code 1981, § 43-34-3, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-22 as Code Section 43-34-3; deleted the former first four sentences which read: "The terms of office of members of the Composite State Board of Medical Examiners in office on June 30, 1999, shall expire July 1, 1999, except that the Governor by executive order may provide that such terms expire after July 1, 1999, but no later than July 1, 2000, and upon the appointment and qualification of their respective successors. Those successors shall be appointed by the Governor for terms of office beginning on the later of July 1, 1999, or the date immediately following the expiration of the terms of office of those members in office on June

30, 1999, with four of such successors to have initial terms of one year, four of such successors to have initial terms of two years, and five of such successors to have initial terms of three years. The Governor shall specify the initial terms of office for each of those successors at the time of their appointment. Upon the expiration of such initial terms, successors to members of the board whose terms of office expire shall serve for terms of four years each."; added subsection (a); in subsection (b), added the subsection designation, added the first sentence, and substituted "relocation" for "removal" in the middle of the last sentence.

Editor's notes. — Ga. L. 1999, p. 296, § 27, not codified by the General Assem-

bly, provides that: "This Act shall become effective on July 1, 1999, except that Sections 12, 13, and 25 of this Act and any other provisions of this Act relating to the transfer of the Composite State Board of Medical Examiners from the jurisdiction of the Secretary of State shall not become effective upon July 1, 1999, if the Governor by executive order issued before that date determines such transfer to be impracticable on that date, in which event those sections and provisions shall become effective upon the effective date specified in that executive order but no later than July 1, 2000." No such executive order was issued.

Ga. L. 2009, p. 859, § 1, effective July 1,

2009, redesignated former Code Section 43-34-3 as present Code Section 43-34-11.

Law reviews. — For article, "Legislative Delegation of Executive Power of Appointment to Private Organizations Held Unconstitutional," see 16 Ga. St. B.J. 129 (1980).

For comment on *Rogers v. Medical Ass'n*, 244 Ga. 151, 259 S.E.2d 85 (1979), invalidating Georgia statute requiring Governor's appointments to Composite State Board of Medical Examiners be made solely from nominees submitted by state medical society as an unconstitutional delegation of legislative authority to a private organization, see 29 Emory L.J. 1183 (1980).

JUDICIAL DECISIONS

Cited in *Reams v. Composite State Bd. of Medical Exmrs.*, 233 Ga. 742, 213 S.E.2d 640 (1975); *Rogers v. Medical Ass'n*, 244 Ga. 151, 259 S.E.2d 85 (1979).

43-34-4. Oath of board members; certificate of appointment.

Immediately and before entering upon the duties of office, the members of the board shall take the constitutional oath of office and shall file the same in the office of the Governor, who, upon receiving the oath of office, shall issue to each member a certificate of appointment. (Ga. L. 1913, p. 101, § 4; Code 1933, § 84-904; Code 1981, § 43-34-23; Code 1981, § 43-34-4, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-23 as Code Section 43-34-4.

43-34-5. Election of board officers; reimbursement of members; meetings; powers and duties; no restriction on licenses.

(a) The board shall meet and shall annually elect a chairperson and vice chairperson. Each member of the board may receive the expense allowance as provided by subsection (b) of Code Section 45-7-21 and the same mileage allowance for the use of a personal car as that received by other state officials and employees or a travel allowance of actual transportation cost if traveling by public carrier within the state. Each board member shall also be reimbursed for any conference or meeting registration fee incurred in the performance of his or her duties as a board member. For each day's service outside of the state as a board member, such member shall receive actual expenses as an expense allowance as well as the mileage allowance for the use of a personal car

equal to that received by other state officials and employees or a travel allowance of actual transportation cost if traveling by public carrier or by rental motor vehicle. Expense vouchers submitted by board members are subject to approval of the chairperson and executive director. Out-of-state travel by board members must be approved by the board chairperson and the executive director.

(b) The board shall hold regular meetings each month, unless in the discretion of the chairperson it is deemed unnecessary for a particular month. Called meetings may be held at the discretion of the chairperson.

(c) The board shall have the following powers and duties:

(1) To adopt, amend, and repeal such rules and regulations in accordance with this chapter necessary for the proper administration and enforcement of this chapter;

(2) To adopt a seal by which the board shall authenticate the acts of the board;

(3) To establish a pool of qualified physicians to act as peer reviewers and expert witnesses and to appoint or contract with physicians professionally qualified by education and training, medical associations, or other professionally qualified organizations to serve as peer reviewers; provided, however, that no licensing, investigative, or disciplinary duties or functions of the board may be delegated to any medical association or related entity by contract or otherwise;

(4) To employ a medical director and other staff to implement this chapter and provide necessary and appropriate support who shall be subject to the same confidentiality requirements of the board;

(5) To keep a docket of public proceedings, actions, and filings;

(6) To set its office hours;

(7) To set all reasonable fees by adoption of a schedule of fees approved by the board. The board shall set such fees sufficient to cover costs of operation;

(8) To establish rules regarding licensure and certification status, including but not limited to inactive status, as the board deems appropriate;

(9) To issue, deny, or reinstate the licenses, certificates, or permits of duly qualified applicants for licensure, certification, or permits under this chapter;

(10) To revoke, suspend, issue terms and conditions, place on probation, limit practice, fine, require additional medical training,

require medical community service, or otherwise sanction licensees, certificate holders, or permit holders;

(11) To renew licenses, certificates, and permits and set renewal and expiration dates and application and other deadlines;

(12) To approve such examinations as are necessary to determine competency to practice under this chapter;

(13) To set examination standards, approve examinations, and set passing score requirements;

(14) To adopt necessary rules concerning proceedings, hearings, review hearings, actions, filings, depositions, and motions related to uncontested cases;

(15) To initiate investigations for the purposes of discovering violations of this chapter;

(16) To administer oaths, subpoena witnesses and documentary evidence including medical records, and take testimony in all matters relating to its duties;

(17) To conduct hearings, reviews, and other proceedings according to Chapter 13 of Title 50;

(18) To conduct investigative interviews;

(19) To issue cease and desist orders to stop the unlicensed practice of medicine or other profession licensed, certified, or permitted under this chapter and impose penalties for such violations;

(20) To request injunctive relief or refer cases for criminal prosecution to appropriate enforcement authorities;

(21) To release investigative or applicant files to another enforcement agency or lawful licensing authority in another state;

(22) To sue and be sued in a court of competent jurisdiction; and

(23) To enter into contracts.

(d) A license issued by the board shall not be limited or restricted to a particular medical specialty. (Ga. L. 1913, p. 101, § 5; Ga. L. 1933, p. 197, § 1; Code 1933, § 84-905; Ga. L. 1962, p. 611, § 1; Ga. L. 1974, p. 1156, § 3; Code 1981, § 43-34-24; Ga. L. 1999, p. 296, § 13; Code 1981, § 43-34-5, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-24 as Code Section 43-34-5; and rewrote this Code section.

Editor's notes. — Ga. L. 1999, p. 296, § 27, not codified by the General Assem-

bly, provides that: "This Act shall become effective on July 1, 1999, except that Sections 12, 13, and 25 of this Act and any other provisions of this Act relating to the transfer of the Composite State Board of Medical Examiners from the jurisdiction

of the Secretary of State shall not become effective upon July 1, 1999, if the Governor by executive order issued before that date determines such transfer to be impracticable on that date, in which event those sections and provisions shall become effective upon the effective date specified in that executive order but no

later than July 1, 2000." No such executive order was issued.

Administrative rules and regulations. — Rules governing physicians, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Composite State Board of Medical Examiners, Chapter 360-1 et seq.

43-34-5.1. Professional health program for monitoring and rehabilitation of impaired health care professionals; definitions; authorization; confidentiality; costs.

(a) As used in this Code section, the term:

(1) "Entity" means an organization or medical professional association which conducts professional health programs.

(2) "Health care professional" means any individual licensed, certified, or permitted by the board under this chapter.

(3) "Impaired" means the inability of a health care professional to practice with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition.

(4) "Professional health program" means a program established for the purposes of monitoring and rehabilitation of impaired health care professionals.

(b) The board shall be authorized to conduct a professional health program to provide monitoring and rehabilitation of impaired health care professionals in this state. To this end, the board shall be authorized to enter into a contract with an entity for the purpose of establishing and conducting such professional health program, including but not limited to:

(1) Monitoring and rehabilitation of impaired health care professionals;

(2) Performing duties related to paragraph (13) of subsection (a) of Code Section 43-34-8; and

(3) Performing such other related activities as determined by the board.

(c) Notwithstanding the provisions of Code Sections 43-34-7 and 43-34-8, the board shall be authorized to provide pertinent information regarding health care professionals, as determined by the board and in its sole discretion, to the entity for its purposes in conducting a professional health program pursuant to this Code section.

(d) All information, interviews, reports, statements, memoranda, or other documents furnished to the entity by the board or other source or produced by the entity and any findings, conclusions, recommendations, or reports resulting from the monitoring or rehabilitation of health care professionals pursuant to this Code section are declared to be privileged and confidential and shall not be subject to Article 4 of Chapter 18 of Title 50, relating to open records. All such records of the entity shall be confidential and shall be used by such entity and its employees and agents only in the exercise of the proper function of the entity pursuant to its contract with the board. Such information, interviews, reports, statements, memoranda, or other documents furnished to or produced by the entity and any findings, conclusions, recommendations, or reports resulting from the monitoring or rehabilitation of health care professionals shall not be available for court subpoenas or for discovery proceedings.

(e) An impaired health care professional who participates in a professional health program conducted pursuant to this Code section shall bear all costs associated with such participation.

(f) Any entity that contracts with the board pursuant to this Code section shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed, for the performance of any functions or duties under the contract if performed in accordance with the terms of such contract and the provisions of this Code section. (Code 1981, § 43-34-5.1, enacted by Ga. L. 2010, p. 543, § 2/SB 252.)

Effective date. — This Code section became effective July 1, 2010.

43-34-6. Board as an independent agency; executive director; meetings and hearings; licenses, certificates, and permits; investigations; venue; credit to veterans; annual report.

(a) The board shall not be under the jurisdiction of the Secretary of State but shall be an independent state agency attached to the Department of Community Health for administrative purposes only, as provided in Code Section 50-4-3, except that such department shall prepare and submit the budget for the board. The board shall have with respect to all matters within the jurisdiction of the board as provided under this chapter the powers, duties, and functions of professional licensing boards as provided in Chapter 1 of this title.

(b) The board shall appoint and fix the compensation of an executive director of such board who shall serve at the pleasure of the board. Any reference in this chapter to the executive director shall mean the executive director appointed pursuant to this subsection.

(c) Meetings and hearings of the board shall be held at the site of the office of the board or at such other site as may be specified by the chairperson of the board. A majority of the members of the board shall constitute a quorum for the transaction of business of the board.

(d) Licenses, certificates, and permits issued by the board shall be subject to renewal and shall be valid for up to two years unless otherwise specified by this chapter and shall be renewable biennially on the renewal date established by the board.

(e) The board, through the executive director, may hire investigators for the purpose of conducting investigations. Any person so employed shall be considered to be a peace officer and shall have all powers, duties, and status of a peace officer of this state; provided, however, that such investigators shall only be authorized, upon written approval of the executive director, notwithstanding Code Sections 16-11-126 and 16-11-129, to carry firearms in the performance of their duties and exercise the powers of arrest in the performance of their duties.

(f) The venue of any action involving members of the board shall be the county in which is found the primary office of the governmental entity of which the defendant is an officer. The executive director of the board shall not be considered a member of the board in determining the venue of any such action and no court shall have jurisdiction of any such action solely by virtue of the executive director residing or maintaining a residence within its jurisdiction.

(g) The board shall give point credit to veterans in the same manner as required under Code Sections 43-1-9 through 43-1-13.

(h) Initial judicial review of a final decision of the board shall be had solely in the superior court of the county of domicile of the board.

(i) The executive director shall make a report no later than December 31 of each year covering the activities of the board for that calendar year, which shall be made available to any member of the General Assembly upon request.

(j) The executive director, with the approval of the board, notwithstanding any other provisions of law to the contrary, shall enter into such contracts as are deemed necessary to carry out this chapter to provide for all services required of the board. (Code 1981, § 43-34-24.1, enacted by Ga. L. 1999, p. 296, § 13; Ga. L. 2000, p. 1706, § 14; Ga. L. 2001, p. 1240, § 6; Code 1981, § 43-34-6, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509; Ga. L. 2010, p. 963, § 2-18/SB 308.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-24.1 as Code Section 43-34-6 and rewrote this Code section.

The 2010 amendment, effective June 4, 2010, deleted “, 16-11-128,” following “Section 16-11-126” near the end of the second sentence of subsection (e). See the editor’s note for applicability.

Editor’s notes. — Ga. L. 1999, p. 296, § 27, not codified by the General Assembly, provides that: “This Act shall become effective on July 1, 1999, except that Sections 12, 13, and 25 of this Act and any other provisions of this Act relating to the transfer of the Composite State Board of Medical Examiners from the jurisdiction of the Secretary of State shall not become effective upon July 1, 1999, if the Governor by executive order issued before that

date determines such transfer to be impracticable on that date, in which event those sections and provisions shall become effective upon the effective date specified in that executive order but no later than July 1, 2000.” No such executive order was issued.

Ga. L. 2010, p. 963, § 3-1, not codified by the General Assembly, provides, in part, that the amendment of this Code section shall apply to all offenses committed on and after June 4, 2010, and shall not affect any prosecutions for acts occurring before June 4, 2010, and shall not act as an abatement of any such prosecution.

43-34-7. Maintenance of roster; confidentiality.

The executive director shall prepare and maintain a roster containing the names and business addresses of all current licensees, certificate holders, and permit holders for each of the various professions regulated by the Georgia Composite Medical Board. A copy of the roster shall be available to any person upon request at a fee prescribed by the board sufficient to cover the cost of printing and distribution. The following shall be treated as confidential, not subject to Article 4 of Chapter 18 of Title 50, relating to open records, and shall not be disclosed without the approval of the board:

(1) Applications and other personal information submitted by applicants, except to the applicant, the staff, and the board;

(2) Information, favorable or unfavorable, submitted by a reference source concerning an applicant, except to the staff and the board;

(3) Examination questions and other examination materials, except to the staff and the board; and

(4) The deliberations of the board with respect to an application, an examination, a complaint, an investigation, or a disciplinary proceeding, except as may be contained in official board minutes; provided, however, that such deliberations may be released only to another state or federal enforcement agency or lawful licensing authority. Releasing the documents pursuant to this paragraph shall not subject any otherwise privileged documents to the provisions of Code Section 50-18-70. (Code 1981, § 43-34-7, enacted by Ga. L. 2009, p. 859, § 1/HB 509.)

Effective date. — This Code section became effective July 1, 2009.

43-34-8. (Effective until January 1, 2013. See note.) Authority to refuse license, certificate, or permit or issue discipline; suspension; restoration; investigations; evidentiary privileges; closed hearings; immunity for reporting; failure to appear; publication of final disciplinary actions.

(a) The board shall have authority to refuse to grant a license, certificate, or permit to an applicant or to discipline a person regulated under this chapter or any antecedent law upon a finding by the board that the licensee, certificate holder, or permit holder or applicant has:

(1) Failed to demonstrate the qualifications or standards for a license, certificate, or permit contained in this chapter or in the rules and regulations of the board. It shall be incumbent upon the applicant to demonstrate to the satisfaction of the board that he or she meets all requirements for the issuance of a license; and, if the board is not satisfied as to the applicant's qualifications, it shall not issue a license, certificate, or permit;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of a profession licensed, certified, or permitted under this chapter or in any document connected therewith, or practiced fraud or deceit or intentionally made any false statement in obtaining a license, certificate, or permit under this chapter to practice pursuant to this chapter, or made a false statement or deceptive registration with the board;

(3) Been convicted of a felony in the courts of this state or any other state, territory, country, or of the United States. As used in this paragraph, the term "conviction of a felony" shall include a conviction of an offense which if committed in this state would be deemed a felony under either state or federal law, without regard to its designation elsewhere. As used in this paragraph, the term "conviction" shall include a finding or verdict of guilt, a plea of guilty resulting in first offender status, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon;

(4) Committed a crime involving moral turpitude, without regard to conviction; the conviction of a crime involving moral turpitude shall be evidence of the commission of such crime. As used in this paragraph, the term "conviction" shall have the meaning prescribed in paragraph (3) of this subsection. For the purpose of this chapter, a conviction or plea of guilty or of nolo contendere to a charge or indictment by either federal or state government for income tax evasion shall not be considered a crime involving moral turpitude;

(5) Had his or her license, certificate, or permit to practice pursuant to this chapter revoked, suspended, or annulled by any lawful

licensing authority; or had other disciplinary action taken against him or her by any lawful licensing authority; or been denied a license by any lawful licensing authority;

(6) Advertised for or solicited patients; obtained a fee or other thing of value on the representation that a manifestly incurable disease can be permanently cured; or made untruthful or improbable statements, or flamboyant or extravagant claims concerning his or her professional excellence or treatment protocols;

(7) Engaged in any unprofessional, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice need not have resulted in actual injury to any person. As used in this paragraph, the term "unprofessional conduct" shall include any departure from, or failure to conform to, the minimum standards of acceptable and prevailing medical practice and shall also include, but not be limited to, the prescribing or use of drugs, treatment, or diagnostic procedures which are detrimental to the patient as determined by the minimum standards of acceptable and prevailing medical practice or by rule of the board;

(8) Performed, procured, or aided or abetted in performing or procuring a criminal abortion;

(9) Knowingly maintained a professional connection or association with any person who is in violation of this chapter or the rules or regulations of the board; or knowingly aided, assisted, procured, or advised any person to practice pursuant to this chapter contrary to this chapter or to the rules and regulations of the board; or knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person or entity to practice pursuant to this chapter; or divided fees or agreed to divide fees received for professional services with any person, firm, association, corporation, or other entity for bringing or referring a patient;

(10) Violated or attempted to violate a law, rule, or regulation of this state, any other state, the board, the United States, or any other lawful authority without regard to whether the violation is criminally punishable, which law, rule, or regulation relates to or in part regulates the practice of medicine, when the licensee or applicant knows or should know that such action is violative of such law, rule, or regulation; or violated a lawful order of the board, previously entered by the board in a disciplinary hearing;

(11) Committed any act or omission which is indicative of bad moral character or untrustworthiness;

(12) Been adjudged mentally incompetent by a court of competent jurisdiction, within or outside this state. Any such adjudication shall

automatically suspend the license, certificate, or permit of any such person and shall prevent the reissuance or renewal of any license, certificate, or permit so suspended for as long as the adjudication of incompetence is in effect unless the board, upon a finding that the licensee, certificate holder, or permit holder is mentally competent, orders otherwise. Any applicant who has been so adjudged to be mentally incompetent shall not receive a license, certificate, or permit unless the board, upon a finding that the applicant is mentally competent, orders otherwise;

(13) Become unable to practice pursuant to this chapter with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition:

(A) In enforcing this paragraph the board may, upon reasonable grounds, require a licensee, certificate holder, permit holder, or applicant to submit to a mental or physical examination by physicians designated by the board. The expense of this examination shall be borne by the licensee, certificate holder, or permit holder or applicant. The results of such examination shall be admissible in any hearing before the board, notwithstanding any claim of privilege under a contrary rule of law or statute, including, but not limited to, Code Section 24-9-21. Every person who shall accept the privilege of practicing a profession regulated under this chapter or who shall file an application for a license to practice a profession regulated under this chapter in this state shall be deemed to have given his or her consent to submit to such mental or physical examination and to have waived all objections to the admissibility of the results in any hearing before the board, upon the grounds that the same constitutes a privileged communication. If a licensee, certificate holder, or permit holder or applicant fails to submit to such an examination when properly directed to do so by the board, unless such failure was due to circumstances beyond his or her control, the board may enter a final order upon proper notice, hearing, and proof of such refusal. Any licensee, certificate holder, permit holder, or applicant who is prohibited from practicing pursuant to this chapter under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate to the board that he or she can resume or begin practice pursuant to this chapter with reasonable skill and safety to patients;

(B) For the purposes of this paragraph, the board and any entity which has entered into a contract with the board pursuant to Code Section 43-34-5.1, if specifically provided for in such contract, may, upon reasonable grounds, obtain any and all records relating to the mental or physical condition of a licensee, certificate holder, or

permit holder or applicant, including psychiatric records; and such records shall be admissible in any hearing before the board, notwithstanding any privilege under a contrary rule of law or statute, including, but not limited to, Code Section 24-9-21. Every person who shall accept the privilege of practicing pursuant to this chapter in this state or who shall file an application to practice pursuant to this chapter in this state shall be deemed to have given his or her consent to the board's obtaining any such records and to have waived all objections to the admissibility of such records in any hearing before the board, upon the grounds that the same constitute a privileged communication; and

(C) If any licensee, certificate holder, or permit holder or applicant could, in the absence of this paragraph, invoke a privilege to prevent the disclosure of the results of the examination provided for in subparagraph (A) of this paragraph or the records relating to the mental or physical condition of such licensee, certificate holder, or permit holder or applicant obtained pursuant to subparagraph (B) of this paragraph, all such information shall be received by the board in camera and shall not be disclosed to the public, nor shall any part of the record containing such information be used against any licensee, certificate holder, or permit holder or applicant in any other type of proceeding;

(14) Cheated on or attempted to subvert an examination by the board;

(15) Committed an act of sexual abuse, misconduct, or exploitation of a patient including guardians and parents of minors;

(16) Mistreated or abandoned a patient or his or her records; provided, however that a physician in compliance with Chapter 33 of Title 31 shall not be considered to have abandoned patient records;

(17) Entered into conduct which discredits the profession;

(18) Failed to furnish records, including, but not limited to, medical records, to the board in response to a subpoena or failed to answer questions on the renewal of the license, certificate, or permit;

(19) Failed to maintain appropriate medical or other records as required by board rule;

(20) Failed to follow generally accepted infection control procedures or Occupational Safety and Health Administration (OSHA) standards;

(21) Failed to comply with federal laws and standards relating to the practice of medicine or other health care profession regulated under this chapter, the regulations of drugs, the delivery of health care, or other related laws;

(22) Failed to comply with an order for child support as defined by Code Section 19-11-9.3; it shall be incumbent upon the applicant, licensee, certificate holder, or permit holder to supply a notice of release to the board from the appropriate child support authorities within the Department of Human Services indicating that the licensee, certificate holder, permit holder, or applicant has come into compliance with an order for child support so that a license, certificate, or permit may be issued if all other conditions for the issuance of a license, certificate, or permit are met;

(23) Failed to enter into satisfactory repayment status and is a borrower in default as defined by Code Section 20-3-295; it shall be incumbent upon the applicant, licensee, certificate holder, or permit holder to supply the notice of release to the board from the Georgia Higher Education Assistance Corporation indicating that the licensee, certificate holder, permit holder, or applicant has entered into satisfactory repayment status so that a license, certificate, or permit may be issued or granted if all other conditions for issuance of a license, certificate, or permit are met; or

(24) Except for practice settings identified in paragraph (7) of subsection (g) of Code Section 43-34-25 and arrangements approved by the board prior to July 1, 2009, as set forth in subsection (k) of Code Section 43-34-103, been a physician that has been or is employed by one the physician:

- (A) Delegates medical acts to:
- (B) Enters a protocol or job description with; or
- (C) Is responsible for supervising.

(a.1) The provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," with respect to emergency action by a professional licensing board and summary suspension of a license are adopted and incorporated by reference into this Code section.

(b)(1) When the board finds that any person is unqualified to be granted a license, certificate, or permit or finds that any person should be disciplined pursuant to subsection (a) of this Code section, the board may take any one or more of the following actions:

- (A) Refuse to grant a license, certificate, or permit to an applicant;
- (B) Place the licensee, certificate holder, or permit holder on probation for a definite or indefinite period with terms and conditions;
- (C) Administer a public or private reprimand, provided that a private reprimand shall not be disclosed to any person except the licensee, certificate holder, or permit holder;

(D) Suspend any license, certificate, or permit for a definite or indefinite period;

(E) Limit or restrict any license, certificate, or permit;

(F) Revoke any license, certificate, or permit;

(G) Impose a fine not to exceed \$3,000.00 for each violation of a law, rule, or regulation relating to the licensee, certificate holder, permit holder, or applicant;

(H) Impose a fine in a reasonable amount to reimburse the board for the administrative costs;

(I) Require passage of a board approved minimum competency examination;

(J) Require board approved medical education;

(K) Condition the penalty, or withhold formal disposition, which actions shall be kept confidential, unless there is a public order upon the applicant, licensee, certificate holder, or permit holder's submission to the care, counseling, or treatment by physicians or other professional persons, which may be provided pursuant to Code Section 43-34-5.1, and the completion of such care, counseling, or treatment, as directed by the board; or

(L) Require a board approved mental and physical evaluation of all licensees, certificate holders, or permit holders.

(2) In addition to and in conjunction with the actions enumerated pursuant to paragraph (1) of this subsection, the board may make a finding adverse to the licensee, certificate holder, permit holder, or applicant but withhold imposition of judgment and penalty; or it may impose the judgment and penalty but suspend enforcement thereof and place the licensee, certificate holder, permit holder, or applicant on probation, which probation may be vacated upon noncompliance with such reasonable terms as the board may impose.

(3) Neither the issuance of a private reprimand nor the denial of a license, certificate, or permit nor the denial of a request for reinstatement of a revoked license, certificate, or permit nor the refusal to issue a previously denied license, certificate, or permit shall be considered to be a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; notice and hearing within the meaning of said chapter shall not be required, but the applicant or licensee, certificate holder, or permit holder shall be allowed to appear before the board if he or she so requests. The board may resolve a pending action by the issuance of a letter of concern. Such letter shall not be considered a disciplinary action or a contested case under Chapter 13 of Title 50 and shall not be disclosed to any

person except the holder of a license, certificate, or permit or an applicant.

(b.1) The board shall suspend the license, certificate, or permit of a person licensed by the board who has been certified by a federal agency and reported to the board for nonpayment or default or breach of a repayment or service obligation under any federal education loan, loan repayment, or service conditional scholarship program. Prior to the suspension, the licensee, certificate holder, or permit holder shall be entitled to notice of the board's intended action and opportunity to appear before the board according to procedures set forth in the board's rules and regulations. A suspension of a license, certificate, or permit under this subsection is not a contested case under Chapter 13 of Title 50, "Georgia Administrative Procedure Act." A license, certificate, or permit suspended under this Code section shall not be reinstated or reissued until the person provides the board a written release issued by the reporting agency stating that the person is making payments on the loan or satisfying the service requirements in accordance with an agreement approved by the reporting agency. If the person has continued to meet all other requirements for issuance of a license, certificate, or permit during the period of suspension, reinstatement of the license, certificate, or permit shall be automatic upon receipt of the notice and payment of any reinstatement fee which the board may impose.

(c) In its discretion, the board may restore and reissue a license, certificate, or permit issued under this chapter or any antecedent law and, as a condition thereof, may impose any disciplinary or corrective measure provided in this chapter.

(d) The executive director is vested with the power and authority to make, or cause to be made through employees or agents of the board, such investigations as he or she, or the board, or any district attorney may deem necessary or advisable in the enforcement of this chapter. Any person properly conducting an investigation on behalf of the board shall have access to and may examine any writing, document, or other material, except that as to which privilege has not been denied or deemed waived by this chapter, and which is deemed by the chairperson of the board, or vice chairperson if the chairperson is not available, to be related to the fitness of any licensee, certificate holder, permit holder, or applicant to practice pursuant to this chapter. The executive director or the chairperson of the board, or vice chairperson if the chairperson is not available, may issue subpoenas to compel such access. When a subpoena is disobeyed, the board may apply to the superior court of the county where the person to whom the subpoena is issued resides for an order requiring obedience. Failure to comply with such order shall be punishable as for contempt of court. The results of any investigations whatsoever shall be reported only to the board, and the records of such

investigations shall be kept by the board; no part of any such record shall be released for any purpose other than a hearing before the board and as provided in Chapter 34A of this title; nor shall such records be subject to subpoena. The board shall be authorized to release records that are not otherwise confidential or privileged only to another state or federal enforcement agency or lawful licensing authority and such release shall not alter the confidential or privileged nature of the documents.

(e) In any hearing to determine a licensee's, certificate holder's, permit holder's, or applicant's fitness to practice pursuant to this chapter, any record relating to any patient of the licensee, certificate holder, permit holder, or applicant shall be admissible into evidence, regardless of any statutory privilege which such patient might otherwise be able to invoke. In addition, no such patient may withhold testimony bearing upon a licensee's, certificate holder's, permit holder's, or applicant's fitness to practice pursuant to this chapter on the ground of privilege between such licensee, certificate holder, permit holder, or applicant and such patient. Any testimony or written evidence relating to a patient of a licensee, certificate holder, permit holder, or applicant or to the record of any such patient shall be received by the board in camera and shall not be disclosed to the public.

(f) In any hearing in which the fitness of a licensee, certificate holder, permit holder, or applicant to practice pursuant to this chapter is in question, the board may exclude all persons from its deliberation of the appropriate action to be taken and may, when in its discretion it deems it necessary, speak to a licensee, certificate holder, permit holder, or applicant in private.

(g) A person, partnership, firm, corporation, association, authority, or other entity shall be immune from civil and criminal liability for reporting or investigating the acts or omissions of a licensee, certificate holder, permit holder, or applicant which violate the provisions of subsection (a) of this Code section or any other provisions of law relating to a licensee's, certificate holder's, permit holder's, or applicant's fitness to practice pursuant to this chapter or for initiating or conducting proceedings against such licensee, certificate holder, permit holder, or applicant, if such report is made or action is taken in good faith without fraud or malice. Any person who testifies in good faith without fraud or malice before the board in any proceeding involving a violation of subsection (a) of this Code section or any other law relating to a licensee's, certificate holder's, permit holder's, or applicant's fitness to practice pursuant to this chapter, or who makes a recommendation to the board in the nature of peer review, shall be immune from civil and criminal liability for so testifying.

(h) Peer review conducted pursuant to this Code section shall be subject to the provisions of Article 6 of Chapter 7 of Title 31, relating to

medical peer review groups. Any person providing information for purposes of peer review under this Code section and any person providing information to the board under this Code section shall not be criminally or civilly liable in any way for such actions unless:

(1) Such information is unrelated to the carrying out of peer review under this Code section; or

(2) Such information is false and the person disclosing such information knew that such information was false.

(i) This Code section is enacted in the public welfare and shall be liberally construed.

(j) The board shall investigate a licensee's, certificate holder's, or permit holder's fitness to practice pursuant to this chapter if the board has received a notification, pursuant to Code Section 33-3-27, regarding that licensee, certificate holder, or permit holder of a medical malpractice judgment or settlement in excess of \$100,000.00 or a notification pursuant to Code Section 33-3-27 that there have been two or more previous judgments against or settlements with the licensee, certificate holder, or permit holder relating to practice pursuant to this chapter involving an action for medical malpractice. Every licensee, certificate holder, or permit holder shall notify the board of any settlement or judgment involving the licensee, certificate holder, or permit holder involving an action for medical malpractice.

(k) The board may conduct an assessment of a licensee's, certificate holder's, or permit holder's fitness to practice pursuant to this chapter if it has disciplined the licensee, certificate holder, or permit holder three times in the last ten years as a result of an action for medical malpractice. The assessment shall include an examination of the licensee's, certificate holder's, or permit holder's entire history with respect to practice pursuant to this chapter and a one-day on-site visit to the licensee's, certificate holder's, or permit holder's current practice location. The assessment shall be completed within six months of the third disciplinary action. As a result of its findings the board may take any action it deems necessary to reduce medical errors and promote patient safety, including revocation, suspension, or limiting the licensee's, certificate holder's, or permit holder's license, certificate, or permit or requiring additional clinical training, additional continuing medical education, proctoring, or referral to appropriate rehabilitation facilities. As used in this subsection, the term "action for medical malpractice" shall have the same meaning as provided in Code Section 9-3-70. The board shall implement this subsection upon the effective date of a specific appropriation of funds for purposes of this subsection as expressed in a line item making specific reference to the full funding of this subsection in an appropriations Act enacted by the General Assembly.

(l) If any licensee, certificate holder, permit holder, or applicant after 30 days' notice fails to appear at any hearing of the board for that licensee, certificate holder, permit holder, or applicant, the board may proceed to hear the evidence against such licensee, certificate holder, permit holder, or applicant and take action as if such licensee, certificate holder, permit holder, or applicant had been present. A notice of hearing, initial or recommended decision, or final decision of the board in a disciplinary proceeding shall be served personally upon the licensee, certificate holder, permit holder, or applicant or served by certified mail, return receipt requested, to the last known address of record with the board. If such material is served by certified mail and is returned marked "unclaimed" or "refused" or is otherwise undeliverable and if the licensee, certificate holder, permit holder, or applicant cannot, after diligent effort, be located, the executive director shall be deemed to be the agent for service for such licensee, certificate holder, permit holder, or applicant for purposes of this Code section, and service upon the executive director shall be deemed to be service upon the licensee, certificate holder, permit holder, or applicant.

(m) The voluntary surrender of a license, certificate, or permit or the failure to renew a license, certificate, or permit by the end of the established penalty period shall have the same effect as a revocation of said license, certificate, or permit, subject to reinstatement in the discretion of the board. The board may restore and reissue a license, certificate, or permit to practice under this chapter and, as a condition thereof, may impose any disciplinary sanction provided by this Code section.

(n) Subsections (a) and (b) of this Code section shall be supplemental to and shall not operate to prohibit the board from acting pursuant to those provisions of law which may now or hereafter authorize other disciplinary grounds and actions for the board. In cases where those other provisions of law so authorize other disciplinary grounds and actions but subsections (a) and (b) of this Code section limit such grounds for action, those other provisions shall apply.

(o) The board shall publish all final public disciplinary actions taken against a licensee, certificate holder, or permit holder pursuant to this chapter on its official website. (Ga. L. 1909, p. 123, § 10; Civil Code 1910, § 1741; Ga. L. 1913, p. 101, § 14; Ga. L. 1918, p. 173, § 8; Code 1933, §§ 84-916, 84-1210; Ga. L. 1957, p. 129, § 1; Ga. L. 1972, p. 673, § 1; Ga. L. 1974, p. 1156, § 6; Ga. L. 1977, p. 317, § 1; Ga. L. 1980, p. 3, § 2; Code 1981, § 43-34-38; Ga. L. 1982, p. 3, § 43; Ga. L. 1982, p. 2266, § 5; Ga. L. 1983, p. 3, § 32; Ga. L. 1983, p. 670, §§ 1, 2; Ga. L. 1987, p. 407, § 2; Ga. L. 1992, p. 6, § 43; Ga. L. 1993, p. 91, § 43; Ga. L. 1999, p. 81, § 43; Ga. L. 1999, p. 296, § 25; Ga. L. 2001, p. 192, § 4; Ga. L. 2001, p. 1170, § 3; Ga. L. 2005, p. 1, § 9/SB 3; Ga. L. 2008, p. 324,

§ 43/SB 455; Code 1981, § 43-34-8, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509; Ga. L. 2010, p. 543, § 3/SB 252; Ga. L. 2010, p. 878, § 43/HB 1387.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-37 as Code Section 43-34-8 and re-wrote this Code section.

The 2010 amendments. — The first 2010 amendment, effective July 1, 2010, in subparagraph (a)(13)(B), inserted “and any entity which has entered into a contract with the board pursuant to Code Section 43-34-5.1, if specifically provided for in such contract,” near the beginning; and in subparagraph (b)(1)(K), substituted “applicant, licensee,” for “licensee or applicant,” near the beginning, and added “, which may be provided pursuant to Code Section 43-34-5.1,” near the end. The second 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, revised punctuation in subparagraph (b)(1)(G), and substituted “The board” for “A board” at the beginning of the next to last sentence of paragraph (b)(3).

Cross references. — Criminal abortion, § 16-12-140 et seq. Denial, restriction, or revocation of medical staff privileges by public hospital, §§ 31-7-7, 31-7-8. Medical peer review groups, § 31-7-130 et seq. Observance of provisions of “living wills” by physicians and other health-care professionals, § 31-32-7. Authorization for civil actions for medical malpractice, § 51-1-27.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, “Department of Human Services” was substituted for “Department of Human Resources” in paragraph (a)(22), “Section 43-34-25” was substituted for “Section 43-34-26” in paragraph (a)(24), and “of law” was substituted for “are law” in the last sentence of subsection (n).

Editor’s notes. — Code Section 43-34-8 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

Ga. L. 1999, p. 296, § 27, not codified by the General Assembly, provides that: “This Act shall become effective on July 1,

1999, except that Sections 12, 13, and 25 of this Act and any other provisions of this Act relating to the transfer of the Composite State Board of Medical Examiners from the jurisdiction of the Secretary of State shall not become effective upon July 1, 1999, if the Governor by executive order issued before that date determines such transfer to be impracticable on that date, in which event those sections and provisions shall become effective upon the effective date specified in that executive order but no later than July 1, 2000.” No such executive order was issued.

Ga. L. 2001, p. 1170, § 1, not codified by the General Assembly, provides that: “The General Assembly finds that managed health care has benefited consumers by negotiating contracts with physicians which prohibit such physicians from billing consumers for fees above and beyond the amount paid by the managed care plan. In order to ensure that the consumers of this state continue to receive such benefits, it is imperative that physicians adhere to their contractual obligations to charge only those fees contractually agreed to and not attempt to pass additional or hidden costs along to consumers. The purpose of Section 2 of this Act is to ensure that consumers are not charged fees above and beyond those already contracted for between their physician and their health benefit plans.”

Ga. L. 2005, p. 1, § 1, not codified by the General Assembly, provides that: “The General Assembly finds that there presently exists a crisis affecting the provision and quality of health care services in this state. Hospitals and other health care providers in this state are having increasing difficulty in locating liability insurance and, when such hospitals and providers are able to locate such insurance, the insurance is extremely costly. The result of this crisis is the potential for a diminution of the availability of access to health care services and a resulting adverse impact on the health and well-being of the citizens of this state. The General Assem-

bly further finds that certain civil justice and health care regulatory reforms as provided in this Act will promote predictability and improvement in the provision of quality health care services and the resolution of health care liability claims and will thereby assist in promoting the provision of health care liability insurance by insurance providers. The General Assembly further finds that certain needed reforms affect not only health care liability claims but also other civil actions and accordingly provides such general reforms in this Act."

Law reviews. — For article on the effect of *nolo contendere* plea on conviction, see 13 Ga. L. Rev. 723 (1979). For article, "Georgia's Open Records and Open Meetings Laws: A Continued March Toward Government in the Sunshine," see 40 Mercer L. Rev. 1 (1988). For article on 2005 amendment of this Code section, see 22 Georgia St. U.L. Rev. 221 (2005).

For note discussing application of procedural due process requirements to hearings by administrative tribunals, see 32 Mercer L. Rev. 359 (1980). For note on the 2001 amendment to this Code section, see 18 Georgia St. U.L. Rev. 241 (2001). For note on the 2001 amendment to this Code section, see 18 Georgia St. U.L. Rev. 249 (2001).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 43-34-37 (now O.C.G.A. § 43-34-42) is not unconstitutionally vague. *Jackson v. Composite State Bd. of Medical Exmrs.*, 256 Ga. 264, 347 S.E.2d 581 (1986).

Title of O.C.G.A. § 43-34-37 (now O.C.G.A. § 43-34-42) which read: "Authority to refuse license or discipline physician; enforcement investigations generally," is descriptive generally of the purposes of the statute and gives sufficient notice of the statute's content pursuant to Ga. Const. 1983, Art. III, Sec. V, Para. III. *Jackson v. Composite State Bd. of Medical Exmrs.*, 256 Ga. 264, 347 S.E.2d 581 (1986).

Right to practice medicine is conditional and subordinate to state's power and duty to safeguard public health, and it is the universal rule that in performance of such duty and in exercise of such power, the state may regulate and control practice of medicine and those who engage therein, subject only to limitation that measures adopted must be reasonable, necessary, and appropriate to accomplish legislature's valid objective of protecting health and welfare of its inhabitants. *Geiger v. Jenkins*, 316 F. Supp. 370 (N.D. Ga. 1970), *aff'd*, 401 U.S. 985, 91 S. Ct. 1236, 28 L. Ed. 2d 525 (1971).

Investigation prior to fitness hearing not subject to due process protections. — When investigator is attempting to gain information concerning doctor's

fitness to practice medicine, due process does not require at this stage of the matter that the doctor be informed of nature of charges that have been made to board or names of doctor's accusers, nor is the doctor denied due process because the doctor is not permitted to participate in selecting documents to be collected by investigator or to participate in deliberations prior to decision to initiate proceedings against the doctor. *Gilmore v. Composite State Bd. of Medical Exmrs.*, 243 Ga. 415, 254 S.E.2d 365 (1979).

Licensee must be allowed access to information. — Licensee facing the possibility of the loss of a license/livelihood must be allowed access to information held by the board that is exculpatory in order for the application of O.C.G.A. §§ 43-1-19(h)(2) and 43-34-37(d) (now O.C.G.A. § 43-34-42) to reach a constitutional result. *Wills v. Composite State Bd. of Medical Exmrs.*, 259 Ga. 549, 384 S.E.2d 636 (1989).

Release of file to prepare for hearing was not prohibited. — When plaintiff sought portions of the Composite State Board of Medical Examiner's (now Georgia Composite Medical Board) file for the express purpose of preparing for a hearing before the board, the release of the file was not prohibited under O.C.G.A. §§ 43-1-19(h)(2) and 43-34-37(d) (now O.C.G.A. § 43-34-42). *Wills v. Composite State Bd. of Medical Exmrs.*, 259 Ga. 549, 384 S.E.2d 636 (1989).

Board's authority to revoke license is permissive. — When statute in permissive terms, as by use of word "may," authorizes privation of valuable right and imposition of penalty, the permissive terms are not mandatory, and conferee of power has discretion in exercising the power. *Smith v. State Bd. of Medical Exmrs.*, 46 Ga. App. 456, 167 S.E. 769 (1933).

Physician's acts constituted making of a medical decision. — Conduct of physician, including going to hospital, reviewing patient's chart, determining that necessary tests had been made and that patient was asleep, constituted making a medical decision, and when this was done under influence of alcohol and drugs, disciplinary action was warranted. *Composite State Bd. of Medical Exmrs. v. Hertell*, 163 Ga. App. 665, 295 S.E.2d 223 (1982).

Driving under influence unrelated to practice of medicine. — Trial court was correct in ruling that the physician's alleged act of driving under the influence of alcohol and drugs was not conduct encompassed by O.C.G.A. § 43-34-37(a)(7) (now O.C.G.A. § 43-34-42); the conduct was unrelated to practice of medicine, and therefore insufficient as a matter of law to

warrant disciplinary action. *Composite State Bd. of Medical Exmrs. v. Hertell*, 163 Ga. App. 665, 295 S.E.2d 223 (1982).

Tardiness of appellant in filing brief and enumeration of errors is not grounds for dismissal under O.C.G.A. § 43-34-37(b) (now O.C.G.A. § 43-34-42). *Composite State Bd. of Medical Exmrs. v. Hertell*, 163 Ga. App. 665, 295 S.E.2d 223 (1982).

Appeal from superior court's review of use and enforcement of investigative powers of the Composite State Board of Medical Examiners required discretionary appeal procedures. *Rankin v. Composite State Bd. of Medical Exmrs.*, 220 Ga. App. 421, 469 S.E.2d 500 (1996).

Cited in *Wall v. American Optometric Ass'n*, 379 F. Supp. 175 (N.D. Ga. 1974); *Morton v. Skrine*, 242 Ga. 844, 252 S.E.2d 408 (1979); *Morton v. Gardner*, 242 Ga. 852, 252 S.E.2d 413 (1979); *Rogers v. Composite State Bd. of Medical Exmrs.*, 245 Ga. 364, 265 S.E.2d 1 (1980); *Morton v. Stewart*, 153 Ga. App. 636, 266 S.E.2d 230 (1980); *United States v. Composite State Bd. of Medical Exmrs.*, 656 F.2d 131 (5th Cir. 1981); *American Ass'n of Cab Cos. v. Olukoya*, 233 Ga. App. 731, 505 S.E.2d 761 (1998).

OPINIONS OF THE ATTORNEY GENERAL

Circumstances determining if distance too great between prescription and nurse's administration. — Whether distance, both in time as well as space, between physician prescribing and nurse administering medication or treatment would subject physician to disciplinary proceedings depends on circum-

stances of each individual case and a determination by the Composite State Board of Medical Examiners (now Georgia Composite Medical Board) as to whether that practice conforms to minimal standards of acceptable and prevailing medical practice. 1979 Op. Att'y Gen. No. 79-2.

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, §§ 57, 58, 88 et seq. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §§ 26 et seq., 51 et seq., 74 et seq.

C.J.S. — 53 C.J.S., Licenses, § 58 et seq. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers, § 11 et seq.

ALR. — Validity of statute providing for revocation of license of physician, surgeon, or dentist, 5 ALR 94; 79 ALR 323.

Grounds for revocation of valid license of physician, surgeon, or dentist, 82 ALR 1184.

What offenses involve moral turpitude within statute providing grounds for denying or revoking license of dentist, physician, or surgeon, 109 ALR 1459.

What amounts to conviction or satisfies requirement as to showing of conviction, within statute making conviction a ground for refusing to grant or for cancel-

ing license or special privilege, 113 ALR 1179.

Practice of medicine, dentistry, or law through radio broadcasting stations, newspapers, or magazines, 114 ALR 1506.

Effect of acquittal or dismissal in criminal prosecution to bar revocation of license of physician or disbarment of attorney, 123 ALR 779.

Pardon as defense to proceeding for suspension or cancellation of license of physician, surgeon, or dentist, 126 ALR 257.

Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 ALR 1388.

Statutory power to revoke or suspend license of physician, dentist, or attorney for "unprofessional conduct" as exercisable without antecedent adoption of regulation as to what shall constitute such conduct, 163 ALR 909.

Conviction as proof of grounds for revocation or suspension of license of physician, surgeon, or dentist, where conviction of such is not an independent cause, 167 ALR 228.

Alcoholism, narcotics addiction, or misconduct with respect to alcoholic beverages or narcotics, as ground for revocation or suspension of license to practice medicine or dentistry, 93 ALR2d 1398.

Revocation or suspension of physician's or surgeon's license for false claims, medical reports, or bills for medical services in personal injury litigation, 95 ALR2d 873.

Professional incompetency as ground for disciplinary measure against physician or dentist, 28 ALR3d 487.

Pretrial discovery in disciplinary proceedings against physician, 28 ALR3d 1440.

Criminal prosecution or disciplinary action against medical practitioner for fraud in connection with claims under Medicaid, Medicare, or similar welfare program for providing medical services, 50 ALR3d 549; 70 ALR4th 132.

Entrapment as defense in proceedings to revoke or suspend license to practice law or medicine, 61 ALR3d 357.

Physician's liability for causing patient to become addicted to drugs, 16 ALR4th 999.

Wrongful or excessive prescription of drugs as ground for revocation or suspension of physician's or dentist's license to practice, 22 ALR4th 668; 19 ALR6th 577.

Physician's or other healer's conduct, or conviction of offense not directly related to medical practice, as ground for disciplinary action, 34 ALR4th 609.

Physician's or other healer's conduct in connection with defense of or resistance to malpractice action as ground for revocation of license or other disciplinary action, 44 ALR4th 248.

Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer, 59 ALR4th 1104.

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner, 70 ALR4th 132.

Necessity of expert evidence in proceeding for revocation or suspension of license of physician, surgeon, or dentist, 74 ALR4th 969.

Existence, nature, and application to medical professional disciplinary board of privilege against disclosure of identity of informer, 86 ALR4th 1024.

Rights as to notice and hearing in proceeding to revoke or suspend license to practice medicine, 10 ALR5th 1.

Medical malpractice: negligent catheterization, 31 ALR5th 1.

False or fraudulent statements or non-disclosures in application for issuance or renewal of license to practice as ground for disciplinary action against, or refusal to license, medical practitioner, 32 ALR5th 57.

43-34-8. (Effective January 1, 2013. See note.) Authority to refuse license, certificate, or permit or issue discipline; suspension; restoration; investigations; evidentiary privileges; closed hearings; immunity for reporting; failure to appear; publication of final disciplinary actions.

(a) The board shall have authority to refuse to grant a license,

certificate, or permit to an applicant or to discipline a person regulated under this chapter or any antecedent law upon a finding by the board that the licensee, certificate holder, or permit holder or applicant has:

(1) Failed to demonstrate the qualifications or standards for a license, certificate, or permit contained in this chapter or in the rules and regulations of the board. It shall be incumbent upon the applicant to demonstrate to the satisfaction of the board that he or she meets all requirements for the issuance of a license; and, if the board is not satisfied as to the applicant's qualifications, it shall not issue a license, certificate, or permit;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of a profession licensed, certified, or permitted under this chapter or in any document connected therewith, or practiced fraud or deceit or intentionally made any false statement in obtaining a license, certificate, or permit under this chapter to practice pursuant to this chapter, or made a false statement or deceptive registration with the board;

(3) Been convicted of a felony in the courts of this state or any other state, territory, country, or of the United States. As used in this paragraph, the term "conviction of a felony" shall include a conviction of an offense which if committed in this state would be deemed a felony under either state or federal law, without regard to its designation elsewhere. As used in this paragraph, the term "conviction" shall include a finding or verdict of guilt, a plea of guilty resulting in first offender status, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon;

(4) Committed a crime involving moral turpitude, without regard to conviction; the conviction of a crime involving moral turpitude shall be evidence of the commission of such crime. As used in this paragraph, the term "conviction" shall have the meaning prescribed in paragraph (3) of this subsection. For the purpose of this chapter, a conviction or plea of guilty or of nolo contendere to a charge or indictment by either federal or state government for income tax evasion shall not be considered a crime involving moral turpitude;

(5) Had his or her license, certificate, or permit to practice pursuant to this chapter revoked, suspended, or annulled by any lawful licensing authority; or had other disciplinary action taken against him or her by any lawful licensing authority; or been denied a license by any lawful licensing authority;

(6) Advertised for or solicited patients; obtained a fee or other thing of value on the representation that a manifestly incurable disease can be permanently cured; or made untruthful or improbable

statements, or flamboyant or extravagant claims concerning his or her professional excellence or treatment protocols;

(7) Engaged in any unprofessional, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice need not have resulted in actual injury to any person. As used in this paragraph, the term “unprofessional conduct” shall include any departure from, or failure to conform to, the minimum standards of acceptable and prevailing medical practice and shall also include, but not be limited to, the prescribing or use of drugs, treatment, or diagnostic procedures which are detrimental to the patient as determined by the minimum standards of acceptable and prevailing medical practice or by rule of the board;

(8) Performed, procured, or aided or abetted in performing or procuring a criminal abortion;

(9) Knowingly maintained a professional connection or association with any person who is in violation of this chapter or the rules or regulations of the board; or knowingly aided, assisted, procured, or advised any person to practice pursuant to this chapter contrary to this chapter or to the rules and regulations of the board; or knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person or entity to practice pursuant to this chapter; or divided fees or agreed to divide fees received for professional services with any person, firm, association, corporation, or other entity for bringing or referring a patient;

(10) Violated or attempted to violate a law, rule, or regulation of this state, any other state, the board, the United States, or any other lawful authority without regard to whether the violation is criminally punishable, which law, rule, or regulation relates to or in part regulates the practice of medicine, when the licensee or applicant knows or should know that such action is violative of such law, rule, or regulation; or violated a lawful order of the board, previously entered by the board in a disciplinary hearing;

(11) Committed any act or omission which is indicative of bad moral character or untrustworthiness;

(12) Been adjudged mentally incompetent by a court of competent jurisdiction, within or outside this state. Any such adjudication shall automatically suspend the license, certificate, or permit of any such person and shall prevent the reissuance or renewal of any license, certificate, or permit so suspended for as long as the adjudication of incompetence is in effect unless the board, upon a finding that the licensee, certificate holder, or permit holder is mentally competent, orders otherwise. Any applicant who has been so adjudged to be mentally incompetent shall not receive a license, certificate, or permit

unless the board, upon a finding that the applicant is mentally competent, orders otherwise;

(13) Become unable to practice pursuant to this chapter with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition:

(A) In enforcing this paragraph the board may, upon reasonable grounds, require a licensee, certificate holder, permit holder, or applicant to submit to a mental or physical examination by physicians designated by the board. The expense of this examination shall be borne by the licensee, certificate holder, or permit holder or applicant. The results of such examination shall be admissible in any hearing before the board, notwithstanding any claim of privilege under a contrary rule of law or statute, including, but not limited to, Code Section 24-5-501. Every person who shall accept the privilege of practicing a profession regulated under this chapter or who shall file an application for a license to practice a profession regulated under this chapter in this state shall be deemed to have given his or her consent to submit to such mental or physical examination and to have waived all objections to the admissibility of the results in any hearing before the board, upon the grounds that the same constitutes a privileged communication. If a licensee, certificate holder, or permit holder or applicant fails to submit to such an examination when properly directed to do so by the board, unless such failure was due to circumstances beyond his or her control, the board may enter a final order upon proper notice, hearing, and proof of such refusal. Any licensee, certificate holder, permit holder, or applicant who is prohibited from practicing pursuant to this chapter under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate to the board that he or she can resume or begin practice pursuant to this chapter with reasonable skill and safety to patients;

(B) For the purposes of this paragraph, the board and any entity which has entered into a contract with the board pursuant to Code Section 43-34-5.1, if specifically provided for in such contract, may, upon reasonable grounds, obtain any and all records relating to the mental or physical condition of a licensee, certificate holder, or permit holder or applicant, including psychiatric records; and such records shall be admissible in any hearing before the board, notwithstanding any privilege under a contrary rule of law or statute, including, but not limited to, Code Section 24-5-501. Every person who shall accept the privilege of practicing pursuant to this chapter in this state or who shall file an application to practice pursuant to this chapter in this state shall be deemed to have given

his or her consent to the board's obtaining any such records and to have waived all objections to the admissibility of such records in any hearing before the board, upon the grounds that the same constitute a privileged communication; and

(C) If any licensee, certificate holder, or permit holder or applicant could, in the absence of this paragraph, invoke a privilege to prevent the disclosure of the results of the examination provided for in subparagraph (A) of this paragraph or the records relating to the mental or physical condition of such licensee, certificate holder, or permit holder or applicant obtained pursuant to subparagraph (B) of this paragraph, all such information shall be received by the board in camera and shall not be disclosed to the public, nor shall any part of the record containing such information be used against any licensee, certificate holder, or permit holder or applicant in any other type of proceeding;

(14) Cheated on or attempted to subvert an examination by the board;

(15) Committed an act of sexual abuse, misconduct, or exploitation of a patient including guardians and parents of minors;

(16) Mistreated or abandoned a patient or his or her records; provided, however that a physician in compliance with Chapter 33 of Title 31 shall not be considered to have abandoned patient records;

(17) Entered into conduct which discredits the profession;

(18) Failed to furnish records, including, but not limited to, medical records, to the board in response to a subpoena or failed to answer questions on the renewal of the license, certificate, or permit;

(19) Failed to maintain appropriate medical or other records as required by board rule;

(20) Failed to follow generally accepted infection control procedures or Occupational Safety and Health Administration (OSHA) standards;

(21) Failed to comply with federal laws and standards relating to the practice of medicine or other health care profession regulated under this chapter, the regulations of drugs, the delivery of health care, or other related laws;

(22) Failed to comply with an order for child support as defined by Code Section 19-11-9.3; it shall be incumbent upon the applicant, licensee, certificate holder, or permit holder to supply a notice of release to the board from the appropriate child support authorities within the Department of Human Services indicating that the licensee, certificate holder, permit holder, or applicant has come into

compliance with an order for child support so that a license, certificate, or permit may be issued if all other conditions for the issuance of a license, certificate, or permit are met;

(23) Failed to enter into satisfactory repayment status and is a borrower in default as defined by Code Section 20-3-295; it shall be incumbent upon the applicant, licensee, certificate holder, or permit holder to supply the notice of release to the board from the Georgia Higher Education Assistance Corporation indicating that the licensee, certificate holder, permit holder, or applicant has entered into satisfactory repayment status so that a license, certificate, or permit may be issued or granted if all other conditions for issuance of a license, certificate, or permit are met; or

(24) Except for practice settings identified in paragraph (7) of subsection (g) of Code Section 43-34-25 and arrangements approved by the board prior to July 1, 2009, as set forth in subsection (k) of Code Section 43-34-103, been a physician that has been or is employed by one the physician:

- (A) Delegates medical acts to:
- (B) Enters a protocol or job description with; or
- (C) Is responsible for supervising.

(a.1) The provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," with respect to emergency action by a professional licensing board and summary suspension of a license are adopted and incorporated by reference into this Code section.

(b)(1) When the board finds that any person is unqualified to be granted a license, certificate, or permit or finds that any person should be disciplined pursuant to subsection (a) of this Code section, the board may take any one or more of the following actions:

- (A) Refuse to grant a license, certificate, or permit to an applicant;
- (B) Place the licensee, certificate holder, or permit holder on probation for a definite or indefinite period with terms and conditions;
- (C) Administer a public or private reprimand, provided that a private reprimand shall not be disclosed to any person except the licensee, certificate holder, or permit holder;
- (D) Suspend any license, certificate, or permit for a definite or indefinite period;
- (E) Limit or restrict any license, certificate, or permit;

(F) Revoke any license, certificate, or permit;

(G) Impose a fine not to exceed \$3,000.00 for each violation of a law, rule, or regulation relating to the licensee, certificate holder, permit holder, or applicant;

(H) Impose a fine in a reasonable amount to reimburse the board for the administrative costs;

(I) Require passage of a board approved minimum competency examination;

(J) Require board approved medical education;

(K) Condition the penalty, or withhold formal disposition, which actions shall be kept confidential, unless there is a public order upon the applicant, licensee, certificate holder, or permit holder's submission to the care, counseling, or treatment by physicians or other professional persons, which may be provided pursuant to Code Section 43-34-5.1, and the completion of such care, counseling, or treatment, as directed by the board; or

(L) Require a board approved mental and physical evaluation of all licensees, certificate holders, or permit holders.

(2) In addition to and in conjunction with the actions enumerated pursuant to paragraph (1) of this subsection, the board may make a finding adverse to the licensee, certificate holder, permit holder, or applicant but withhold imposition of judgment and penalty; or it may impose the judgment and penalty but suspend enforcement thereof and place the licensee, certificate holder, permit holder, or applicant on probation, which probation may be vacated upon noncompliance with such reasonable terms as the board may impose.

(3) Neither the issuance of a private reprimand nor the denial of a license, certificate, or permit nor the denial of a request for reinstatement of a revoked license, certificate, or permit nor the refusal to issue a previously denied license, certificate, or permit shall be considered to be a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; notice and hearing within the meaning of said chapter shall not be required, but the applicant or licensee, certificate holder, or permit holder shall be allowed to appear before the board if he or she so requests. The board may resolve a pending action by the issuance of a letter of concern. Such letter shall not be considered a disciplinary action or a contested case under Chapter 13 of Title 50 and shall not be disclosed to any person except the holder of a license, certificate, or permit or an applicant.

(b.1) The board shall suspend the license, certificate, or permit of a person licensed by the board who has been certified by a federal agency

and reported to the board for nonpayment or default or breach of a repayment or service obligation under any federal education loan, loan repayment, or service conditional scholarship program. Prior to the suspension, the licensee, certificate holder, or permit holder shall be entitled to notice of the board's intended action and opportunity to appear before the board according to procedures set forth in the board's rules and regulations. A suspension of a license, certificate, or permit under this subsection is not a contested case under Chapter 13 of Title 50, "Georgia Administrative Procedure Act." A license, certificate, or permit suspended under this Code section shall not be reinstated or reissued until the person provides the board a written release issued by the reporting agency stating that the person is making payments on the loan or satisfying the service requirements in accordance with an agreement approved by the reporting agency. If the person has continued to meet all other requirements for issuance of a license, certificate, or permit during the period of suspension, reinstatement of the license, certificate, or permit shall be automatic upon receipt of the notice and payment of any reinstatement fee which the board may impose.

(c) In its discretion, the board may restore and reissue a license, certificate, or permit issued under this chapter or any antecedent law and, as a condition thereof, may impose any disciplinary or corrective measure provided in this chapter.

(d) The executive director is vested with the power and authority to make, or cause to be made through employees or agents of the board, such investigations as he or she, or the board, or any district attorney may deem necessary or advisable in the enforcement of this chapter. Any person properly conducting an investigation on behalf of the board shall have access to and may examine any writing, document, or other material, except that as to which privilege has not been denied or deemed waived by this chapter, and which is deemed by the chairperson of the board, or vice chairperson if the chairperson is not available, to be related to the fitness of any licensee, certificate holder, permit holder, or applicant to practice pursuant to this chapter. The executive director or the chairperson of the board, or vice chairperson if the chairperson is not available, may issue subpoenas to compel such access. When a subpoena is disobeyed, the board may apply to the superior court of the county where the person to whom the subpoena is issued resides for an order requiring obedience. Failure to comply with such order shall be punishable as for contempt of court. The results of any investigations whatsoever shall be reported only to the board, and the records of such investigations shall be kept by the board; no part of any such record shall be released for any purpose other than a hearing before the board and as provided in Chapter 34A of this title; nor shall such records be subject to subpoena. The board shall be authorized to release records that are not otherwise confidential or privileged only to another state or

federal enforcement agency or lawful licensing authority and such release shall not alter the confidential or privileged nature of the documents.

(e) In any hearing to determine a licensee's, certificate holder's, permit holder's, or applicant's fitness to practice pursuant to this chapter, any record relating to any patient of the licensee, certificate holder, permit holder, or applicant shall be admissible into evidence, regardless of any statutory privilege which such patient might otherwise be able to invoke. In addition, no such patient may withhold testimony bearing upon a licensee's, certificate holder's, permit holder's, or applicant's fitness to practice pursuant to this chapter on the ground of privilege between such licensee, certificate holder, permit holder, or applicant and such patient. Any testimony or written evidence relating to a patient of a licensee, certificate holder, permit holder, or applicant or to the record of any such patient shall be received by the board in camera and shall not be disclosed to the public.

(f) In any hearing in which the fitness of a licensee, certificate holder, permit holder, or applicant to practice pursuant to this chapter is in question, the board may exclude all persons from its deliberation of the appropriate action to be taken and may, when in its discretion it deems it necessary, speak to a licensee, certificate holder, permit holder, or applicant in private.

(g) A person, partnership, firm, corporation, association, authority, or other entity shall be immune from civil and criminal liability for reporting or investigating the acts or omissions of a licensee, certificate holder, permit holder, or applicant which violate the provisions of subsection (a) of this Code section or any other provisions of law relating to a licensee's, certificate holder's, permit holder's, or applicant's fitness to practice pursuant to this chapter or for initiating or conducting proceedings against such licensee, certificate holder, permit holder, or applicant, if such report is made or action is taken in good faith without fraud or malice. Any person who testifies in good faith without fraud or malice before the board in any proceeding involving a violation of subsection (a) of this Code section or any other law relating to a licensee's, certificate holder's, permit holder's, or applicant's fitness to practice pursuant to this chapter, or who makes a recommendation to the board in the nature of peer review, shall be immune from civil and criminal liability for so testifying.

(h) Peer review conducted pursuant to this Code section shall be subject to the provisions of Article 6 of Chapter 7 of Title 31, relating to medical peer review groups. Any person providing information for purposes of peer review under this Code section and any person providing information to the board under this Code section shall not be criminally or civilly liable in any way for such actions unless:

(1) Such information is unrelated to the carrying out of peer review under this Code section; or

(2) Such information is false and the person disclosing such information knew that such information was false.

(i) This Code section is enacted in the public welfare and shall be liberally construed.

(j) The board shall investigate a licensee's, certificate holder's, or permit holder's fitness to practice pursuant to this chapter if the board has received a notification, pursuant to Code Section 33-3-27, regarding that licensee, certificate holder, or permit holder of a medical malpractice judgment or settlement in excess of \$100,000.00 or a notification pursuant to Code Section 33-3-27 that there have been two or more previous judgments against or settlements with the licensee, certificate holder, or permit holder relating to practice pursuant to this chapter involving an action for medical malpractice. Every licensee, certificate holder, or permit holder shall notify the board of any settlement or judgment involving the licensee, certificate holder, or permit holder involving an action for medical malpractice.

(k) The board may conduct an assessment of a licensee's, certificate holder's, or permit holder's fitness to practice pursuant to this chapter if it has disciplined the licensee, certificate holder, or permit holder three times in the last ten years as a result of an action for medical malpractice. The assessment shall include an examination of the licensee's, certificate holder's, or permit holder's entire history with respect to practice pursuant to this chapter and a one-day on-site visit to the licensee's, certificate holder's, or permit holder's current practice location. The assessment shall be completed within six months of the third disciplinary action. As a result of its findings the board may take any action it deems necessary to reduce medical errors and promote patient safety, including revocation, suspension, or limiting the licensee's, certificate holder's, or permit holder's license, certificate, or permit or requiring additional clinical training, additional continuing medical education, proctoring, or referral to appropriate rehabilitation facilities. As used in this subsection, the term "action for medical malpractice" shall have the same meaning as provided in Code Section 9-3-70. The board shall implement this subsection upon the effective date of a specific appropriation of funds for purposes of this subsection as expressed in a line item making specific reference to the full funding of this subsection in an appropriations Act enacted by the General Assembly.

(l) If any licensee, certificate holder, permit holder, or applicant after 30 days' notice fails to appear at any hearing of the board for that licensee, certificate holder, permit holder, or applicant, the board may

proceed to hear the evidence against such licensee, certificate holder, permit holder, or applicant and take action as if such licensee, certificate holder, permit holder, or applicant had been present. A notice of hearing, initial or recommended decision, or final decision of the board in a disciplinary proceeding shall be served personally upon the licensee, certificate holder, permit holder, or applicant or served by certified mail, return receipt requested, to the last known address of record with the board. If such material is served by certified mail and is returned marked "unclaimed" or "refused" or is otherwise undeliverable and if the licensee, certificate holder, permit holder, or applicant cannot, after diligent effort, be located, the executive director shall be deemed to be the agent for service for such licensee, certificate holder, permit holder, or applicant for purposes of this Code section, and service upon the executive director shall be deemed to be service upon the licensee, certificate holder, permit holder, or applicant.

(m) The voluntary surrender of a license, certificate, or permit or the failure to renew a license, certificate, or permit by the end of the established penalty period shall have the same effect as a revocation of said license, certificate, or permit, subject to reinstatement in the discretion of the board. The board may restore and reissue a license, certificate, or permit to practice under this chapter and, as a condition thereof, may impose any disciplinary sanction provided by this Code section.

(n) Subsections (a) and (b) of this Code section shall be supplemental to and shall not operate to prohibit the board from acting pursuant to those provisions of law which may now or hereafter authorize other disciplinary grounds and actions for the board. In cases where those other provisions of law so authorize other disciplinary grounds and actions but subsections (a) and (b) of this Code section limit such grounds for action, those other provisions shall apply.

(o) The board shall publish all final public disciplinary actions taken against a licensee, certificate holder, or permit holder pursuant to this chapter on its official website. (Ga. L. 1909, p. 123, § 10; Civil Code 1910, § 1741; Ga. L. 1913, p. 101, § 14; Ga. L. 1918, p. 173, § 8; Code 1933, §§ 84-916, 84-1210; Ga. L. 1957, p. 129, § 1; Ga. L. 1972, p. 673, § 1; Ga. L. 1974, p. 1156, § 6; Ga. L. 1977, p. 317, § 1; Ga. L. 1980, p. 3, § 2; Code 1981, § 43-34-38; Ga. L. 1982, p. 3, § 43; Ga. L. 1982, p. 2266, § 5; Ga. L. 1983, p. 3, § 32; Ga. L. 1983, p. 670, §§ 1, 2; Ga. L. 1987, p. 407, § 2; Ga. L. 1992, p. 6, § 43; Ga. L. 1993, p. 91, § 43; Ga. L. 1999, p. 81, § 43; Ga. L. 1999, p. 296, § 25; Ga. L. 2001, p. 192, § 4; Ga. L. 2001, p. 1170, § 3; Ga. L. 2005, p. 1, § 9/SB 3; Ga. L. 2008, p. 324, § 43/SB 455; Code 1981, § 43-34-8, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509; Ga. L. 2010, p. 543, § 3/SB 252; Ga. L. 2010, p. 878, § 43/HB 1387; Ga. L. 2011, p. 99, § 74/HB 24.)

The 2011 amendment, effective January 1, 2013, substituted “Code Section 24-5-501” for “Code Section 24-9-21” at the end of the third sentence of subparagraph (a)(13)(A) and at the end of the first sentence of subparagraph (a)(13)(B). See editor’s note for applicability.

Editor’s notes. — Code Section 43-34-8 is set out twice in this Code. The

first version is effective until January 1, 2013, and the second version becomes effective on that date.

Ga. L. 2011, p. 99, § 101, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

43-34-9. Prior notice and hearing in disciplinary proceedings; proceedings as constituting contested cases; subpoenas; failure to appear.

Proceedings before the board wherein a licensee’s, certificate holder’s, or permit holder’s right to practice pursuant to this chapter in this state is terminated, suspended, or limited or wherein a public reprimand is administered shall require prior notice to the licensee and an opportunity for hearing; and such proceedings shall be considered contested cases within the meaning of Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” Neither refusal of a license, certificate, or permit nor a private reprimand nor a letter of concern shall be considered a contested case within the meaning of Chapter 13 of Title 50, and notice and hearing within the meaning of such chapter shall not be required; provided, however, that the applicant shall be allowed to appear before the board, if the applicant so requests, prior to the board making a final decision regarding the issuance of the license, certificate, or permit. The power to subpoena as set forth in Chapter 13 of Title 50 shall include the power to subpoena any book, writing, paper, or document. If any licensee, certificate holder, or permit holder fails to appear at any hearing after reasonable notice, the board may proceed to hear the evidence against such licensee, certificate holder, or permit holder and take action as if such licensee, certificate holder, or permit holder had been present. (Ga. L. 1913, p. 101, § 14; Ga. L. 1918, p. 173, § 8; Code 1933, §§ 84-917, 84-918; Ga. L. 1974, p. 1156, § 7; Code 1981, § 43-34-37; Code 1981, § 43-34-9, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-38 as Code Section 43-34-9; in the first sentence, inserted “, certificate holder’s or permit holder’s” and substituted “pursuant to this chapter” for “medicine”; in the second sentence, inserted “, certificate, or permit”, inserted “nor a letter of concern”, and substituted the proviso for “but the applicant physician shall be al-

lowed to appear before the board if he so requests” at the end; and, in the last sentence, inserted “, certificate holder, or permit holder” three times.

Law reviews. — For note discussing application of procedural due process requirements to hearings by administrative tribunals, see 32 Mercer L. Rev. 359 (1980).

JUDICIAL DECISIONS

Forfeiture of license under federal law. — Federal district court was not required to implement state law procedures to forfeit defendant's medical license under 21 U.S.C. § 853. *United States v. Dicter*, 198 F.3d 1284 (11th Cir.

1999), cert. denied, 531 U.S. 828, 121 S. Ct. 77, 148 L. Ed. 2d 40 (2000).

Cited in *Hutchinson v. Composite State Bd. of Medical Exmrs.*, 263 Ga. 186, 429 S.E.2d 661 (1993).

RESEARCH REFERENCES

ALR. — Malicious prosecution predicated upon prosecution, institution, or instigation of disciplinary proceeding against member of medical or allied profession, 39 ALR3d 473.

Applicability of statute of limitations or doctrine of laches to proceeding to revoke or suspend license to practice medicine, 51 ALR4th 1147.

43-34-10. Notification of conviction.

Any licensee, certificate holder, or permit holder who is convicted under the laws of this state, the United States, or any other state, territory, or country of a felony as defined in paragraph (5) of Code Section 16-1-3 shall be required to notify the board of the conviction within ten days of the conviction. The failure to notify the board of a conviction shall be considered grounds for revocation of his or her license, certificate, permit, or other authorization to conduct a profession regulated under this chapter. (Code 1981, § 43-34-10, enacted by Ga. L. 2009, p. 859, § 1/HB 509.)

Effective date. — This Code section became effective July 1, 2009.

43-34-11. Continuing education requirement.

(a)(1) The board shall be authorized to require persons seeking renewal of a license, certificate, or permit under this chapter to complete board approved continuing education of not less than 40 hours biennially. The board shall be authorized to approve courses offered by institutions of higher learning, specialty societies, or professional organizations, including, but not limited to, the American Medical Association, the National Medical Association, and the American Osteopathic Association, the number of hours required, and the category in which these hours should be earned. This paragraph shall not apply to respiratory care professionals, persons seeking renewal of certification as respiratory care professionals, clinical perfusionists, or persons seeking renewal of licensure as a clinical perfusionist.

(2) The board shall be authorized to require persons seeking renewal of certification as respiratory care professionals under Arti-

cle 6 of this chapter to complete board approved continuing education. The board shall be authorized to establish the number of hours of continuing education required biennially for renewal of certification as a respiratory care professional and the categories in which these hours should be earned. The board shall be authorized to approve courses offered by institutions of higher learning, specialty societies, or professional organizations. Any action taken by the board pursuant to this paragraph shall be taken in conformity with the provisions of Code Section 43-34-143.

(3) The board shall be authorized to require persons seeking renewal of licensure as clinical perfusionists under Article 7 of this chapter to complete board approved continuing education. The board shall be authorized to establish the number of hours of continuing education required biennially for renewal of licensure as a clinical perfusionist and the categories in which these hours should be earned. The board shall be authorized to approve courses offered by institutions of higher learning, specialty societies, or professional organizations. Any action taken by the board pursuant to this paragraph shall be taken in conformity with the provisions of Code Section 43-34-172.

(b)(1) The board shall be authorized to waive the continuing education requirement in cases of hardship, disability, illness, or in cases where physicians or physician assistants are serving in fellowships, new specialty residencies, postgraduate specialty programs, the United States Congress or Georgia General Assembly, or under such other circumstances as the board deems appropriate.

(2) The board shall require no more than 20 hours of continuing education annually for retired physicians who have an active license and who provide uncompensated health care services pursuant to Code Section 43-34-41 or Article 8 of Chapter 8 of Title 31; provided, however, that the board shall be authorized to require up to 40 hours of continuing education for retired physicians who have not had an active license to practice medicine for up to five years.

(c) The board shall be authorized to promulgate rules and regulations to implement and ensure compliance with the requirements of this Code section.

(d) This Code section shall apply to each licensing, certification, permit, and renewal cycle which begins after the 1990-1991 renewal. (Code 1981, § 43-34-3, enacted by Ga. L. 1990, p. 689, § 1; Ga. L. 1996, p. 235, § 1; Ga. L. 1997, p. 403, § 1; Ga. L. 2007, p. 353, § 1/HB 626; Ga. L. 2008, p. 324, § 43/SB 455; Code 1981, § 43-34-11, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509; Ga. L. 2011, p. 779, § 1D/SB 100.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-3 as Code Section 43-34-11; in the first sentence of paragraph (a)(1), substituted “license, certificate, or permit” for “license or certificate”; in paragraph (b)(1), substituted “physician” for “physicians” and inserted “or Georgia General Assembly”; in the middle of paragraph (b)(2), substituted “Code Section 43-34-41” for “Code Section 43-34-45.1”; and, in subsection (d), inserted “, permit,”.

The 2011 amendment, effective May 13, 2011, in the last sentence of paragraph (a)(1), substituted a comma for “or” near the middle, and added “, clinical perfusionists, or persons seeking renewal of licensure as a clinical perfusionist” at the end; and added paragraph (a)(3).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, “biennially” was substituted for “biennially” in the second sentence of paragraph (a)(2).

43-34-12. Radiologist assistant defined.

(a) For purposes of this chapter, the term “radiologist assistant” means an advanced level certified diagnostic radiologic technologist who assists radiologists under levels of supervision defined by the Georgia Composite Medical Board in performing advanced diagnostic imaging procedures as determined by board rule, including, but not limited to, enteral and parenteral procedures when performed under the direction of the supervising radiologist and may include injecting diagnostic agents to sites other than intravenous, performing diagnostic aspirations and localizations, and assisting radiologists with other invasive procedures.

(b) This Code section is for definitional purposes only and shall not be construed to require any duties or obligations regarding radiology assistants that did not already exist as of June 30, 2009. (Code 1981, § 43-34-12, enacted by Ga. L. 2009, p. 859, § 1/HB 509.)

Effective date. — This Code section became effective July 1, 2009.

ARTICLE 2

MEDICAL PRACTICE

Cross references. — Continuation of State Medical Education Board, § 20-3-510. Nonprofit medical service corporations, T. 33, C. 18. Georgia Board for

Physician Workforce, T. 49, C. 10. Liability of persons rendering emergency care, § 51-1-29.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 39 Am. Jur. 2d, Health, §§ 1 et seq., 26 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 72

Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614,

615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 39A C.J.S., Health and Environment, §§ 3 et seq., 37 et seq., 48 et seq. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A

C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Physician's use of patient's tissues, cells, or bodily substances for medical research or economic purposes, 16 ALR5th 143.

43-34-20. Short title.

This article shall be known as the "Medical Practice Act of the State of Georgia." (Code 1981, § 43-34-20, enacted by Ga. L. 2009, p. 859, § 1/HB 509.)

Effective date. — This Code section became effective July 1, 2009.

Editor's notes. — Ga. L. 2009, p. 859,

§ 1, effective July 1, 2009, redesignated former Code Section 43-34-20 as present Code Section 43-34-21.

43-34-21. Definitions.

As used in this article, the term:

(1) "Board" means the Georgia Composite Medical Board.

(2) "Physician" means a person licensed to practice medicine under this article.

(2.1) "Postgraduate training" means a program for the training of interns, residents, or postresidency fellows that is approved by the Accreditation Council for Graduate Medical Education (ACGME), American Osteopathic Association (AOA), or the board.

(3) "To practice medicine," "the practice of medicine," or "practicing medicine" means to hold oneself out to the public as being engaged in the diagnosis or treatment of disease, defects, or injuries of human beings; or the suggestion, recommendation, or prescribing of any form of treatment for the intended palliation, relief, or cure of any physical, mental, or functional ailment or defect of any person with the intention of receiving therefor, either directly or indirectly, any fee, gift, or compensation whatsoever; or the maintenance of an office for the reception, examination, and treatment of persons suffering from disease, defect, or injury of body or mind; or attaching the title "M.D.," "Oph.," "D.," "Dop.," "Surgeon," "Doctor," "D.O.," "Doctor of Osteopathy," "Allopathic Physician," "Osteopathic Physician," or "Physician," either alone or in connection with other words, or any other words or abbreviations to one's name, indicating that such person is engaged in the treatment or diagnosis of disease, defects, or injuries to human beings, provided that the terms "doctors of medi-

cine,” “doctors of osteopathic medicine,” “doctors of medicine licensed to practice in the state,” and similar terms wherever used or appearing in this article or elsewhere shall mean and include only those persons licensed under this article. (Ga. L. 1913, p. 101, § 15; Code 1933, § 84-901; Ga. L. 1970, p. 301, §§ 1, 2; Ga. L. 1972, p. 847, § 1; Ga. L. 1973, p. 877, § 1; Ga. L. 1974, p. 1156, § 1; Code 1981, § 43-34-20; Ga. L. 1982, p. 3, § 43; Ga. L. 1983, p. 3, § 32; Ga. L. 1984, p. 22, § 43; Ga. L. 1999, p. 81, § 43; Ga. L. 2000, p. 558, § 2; Code 1981, § 43-34-21, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-20 as Code Section 43-34-21; rewrote paragraph (1); deleted former paragraph (2) concerning internships; redesignated former paragraph (2.1) as present paragraph (2); added paragraph (2.1); in paragraph (3), inserted a comma, inserted “the practice of medicine,” or “practicing medicine” near the beginning, inserted “‘Allopathic Physician,’ ‘Osteopathic Physician,’ or ‘Physician,’” in the middle, inserted “doctors of osteopathic medicine,” and substituted “licensed” for “who are licensed to practice medicine” near the end.

Editor’s notes. — Ga. L. 2009, p. 859,

§ 1, effective July 1, 2009, redesignated former Code Section 43-34-21 as present Code Section 43-34-2.

Law reviews. — For note on the chiropractor as an expert witness, see 15 Mercer L. Rev. 431 (1964).

For comment on Rogers v. Medical Ass’n, 244 Ga. 151, 259 S.E.2d 85 (1979), invalidating Georgia statute requiring Governor’s appointments to Composite State Board of Medical Examiners be made solely from nominees submitted by state medical society as an unconstitutional delegation of legislative authority to a private organization, see 29 Emory L.J. 1183 (1980).

JUDICIAL DECISIONS

Legitimate state interest in ensuring public’s ability to make informed choice of physician. — State is legitimately interested in assuring that the public have at least some of the information necessary to make an informed judgment in choosing a physician. *Oliver v. Morton*, 361 F. Supp. 1262 (N.D. Ga. 1973).

Definition of practice of medicine encompasses practice of surgery. *McMurray v. Bateman*, 221 Ga. 240, 144 S.E.2d 345 (1965).

Podiatrists do not hold full-practice licenses because the “practice of medicine” is not defined as limited to any area of the body. *Shaw v. Hospital Auth.*, 507 F.2d 625 (5th Cir. 1975).

Mere failure to have license to practice does not authorize inference of negligence when one attempts to treat or operate on another and injures the pa-

tient. *Andrews v. Lofton*, 80 Ga. App. 723, 57 S.E.2d 338 (1950).

Plaintiff must show causal relationship between lack of license and injury sustained. — Allegations that duties and inhibitions imposed upon the defendant by statutes as to necessity of having a license to practice medicine or surgery were due to the plaintiff and child personally, and as members of public seeking medical and surgical care, and that death of child was a natural and probable consequence of violation of such statutes by defendant were subject to demurrer (now motion to dismiss) for failure to show anything having a causal relation to death of child. *Andrews v. Lofton*, 80 Ga. App. 723, 57 S.E.2d 338 (1950).

Defendant’s holding self out as physician is relevant to establish why plaintiff engaged defendant’s services. — Allegation that the defendant

falsely held self out as a physician and surgeon, and that the defendant did not possess qualifications necessary for possession of a license are pertinent by way of history or inducement to show why the plaintiff engaged services of the defendant and for that reason should not be stricken on demurrer (now motion to dismiss), though irrelevant on the question of the defendant's negligence. *Andrews v. Lofton*, 80 Ga. App. 723, 57 S.E.2d 338 (1950).

State may show defendant held self out as physician when defendant denies practice. — When main defense is that even though the defendant sold medicine, the defendant never practiced that profession, it is competent for the state to prove, if the state can, that the defendant did practice that profession generally, that the defendant held self out to public as being engaged in diagnosis or treatment of diseases, or that the defendant suggested, recommended, or prescribed medical treatment, with intention of receiving fee therefor, or that the defendant considered self a doctor of medicine. *Lyda v. State*, 47 Ga. App. 45, 169 S.E. 751 (1933).

Statute of limitations for medical malpractice applicable to pharmacists. — Inasmuch as a narrow definition for "the practice of medicine" is not inconsistent with a broad definition of "medical malpractice," the Georgia statute of limitations for medical malpractice is applicable to an action brought against a pharmacist notwithstanding the fact that a pharmacist is not engaged in "the practice of medicine." *Faser v. Sears, Roebuck & Co.*, 674 F.2d 856 (11th Cir. 1982).

Osteopathic and allopathic physicians. — Fact that both osteopathic and allopathic physicians are licensed to practice medicine does not mean, as a matter

of law, that the methods of diagnosis and treatment of the two schools of practice overlap in all areas. Even though osteopaths may now prescribe medicine, the two schools of medicine differ in many respects, both in diagnosis and treatment. *Milligan v. Manno*, 197 Ga. App. 171, 397 S.E.2d 713 (1990).

Radiological physicist does not practice medicine. — When the defendant's job as a radiological physicist involved calibrating the cobalt machine which is used to deliver radiation to the patient, and performing quality control services on any machines used in this therapy, and the treating physician determines how much radiation the patient needs, and the defendant then calibrates the machine to deliver this amount, the defendant was not practicing medicine within the meaning of O.C.G.A. § 43-34-20(3) (now O.C.G.A. § 43-34-21(3)) and therefore the affidavit requirements of O.C.G.A. § 9-11-9.1 do not apply to radiological physicists. *Gillis v. Goodgame*, 262 Ga. 117, 414 S.E.2d 197 (1992).

Cited in Georgia State Bd. of Exmrs. in Optometry v. Friedmans' Jewelers, Inc., 183 Ga. 669, 189 S.E. 238 (1936); *Georgia Ass'n of Osteopathic Physicians & Surgeons, Inc. v. Allen*, 31 F. Supp. 206 (M.D. Ga. 1940); *Reams v. Composite State Bd. of Medical Exmrs.*, 233 Ga. 742, 213 S.E.2d 640 (1975); *Reams v. Composite State Bd. of Medical Exmrs.*, 237 Ga. 224, 227 S.E.2d 346 (1976); *Blue Cross of Georgia/Atlanta, Inc. v. Grenwald*, 148 Ga. App. 486, 251 S.E.2d 585 (1978); *Sherrer v. Hale*, 248 Ga. 793, 285 S.E.2d 714 (1982); *Blue Cross & Blue Shield of Georgia/Atlanta, Inc. v. Dillon*, 164 Ga. App. 724, 296 S.E.2d 210 (1982); *Zechmann v. Thigpen*, 210 Ga. App. 726, 437 S.E.2d 475 (1993).

OPINIONS OF THE ATTORNEY GENERAL

Courts have broadly interpreted the law as including every branch of the healing arts. 1979 Op. Att'y Gen. No. 79-45.

Podiatry construed as "medical practice". — Definition of podiatry, given by former Code 1933, § 84-601, places activities of practitioners of that profession clearly within definitions of "medical

practice" and "practice of medicine" as defined in former Code 1933, § 84-901 (see O.C.G.A. § 43-34-21). 1971 Op. Att'y Gen. No. 71-133; 1971 Op. Att'y Gen. No. 71-199.

Definition of "podiatry" is sufficient to bring podiatrists within the definition of medical practitioners for insurance purposes. 1972 Op. Att'y Gen. No. U72-17.

Podiatrists are licensed only for limited practice of medicine. — Although licensed only for a limited practice of medicine, podiatrists should be included within the term "licensed doctors of medicine" as that term was used in former Code 1933, § 56-1708 (see O.C.G.A. § 33-19-13). 1971 Op. Att'y Gen. No. 71-133.

Persons engaging in the practice of naturopathy who were not licensed pursuant to Ga. L. 1950, p. 168 or who are not otherwise licensed as practitioners of the healing arts are "practicing medicine" without a license in violation of the Georgia Medical Practice Act, O.C.G.A. § 43-34-20 et seq. 1982 Op. Att'y Gen. No. 82-11.

Medical procedures not permitted to be performed by dentists. — Osteopathic adjustments of the cranial bones (cranial osteopath) for the treatment of temporomandibular (craniomandibular) disorders is not within the scope of a dental license under Georgia law and the performance of such practice or procedure by dentists constitutes the unlicensed practice of medicine. 1989 Op. Att'y Gen. No. 89-49.

Performing thermographic studies of the cervical and lumbar spine and extremities is not within the scope of a dental license under Georgia law and the performance of such practice or procedure by dentists constitutes the unlicensed practice of medicine. 1989 Op. Att'y Gen. No. 89-49.

Taking and interpreting x-rays to evaluate cervical spine relationships, including flexion, extension and anterior-posterior views of the cervical spine is not within the scope of a dental license under Georgia law, and the performance of such practice or procedure by dentists constitutes the unlicensed practice of medicine. 1989 Op. Att'y Gen. No. 89-49.

Application to the neck, shoulders, and back of physical therapy modalities such as ultrasound, transcutaneous electrical nerve stimulation ("TENS"), or galvanic stimulation is not within the scope of a dental license under Georgia law, and the performance of such practice or procedure by dentists constitutes the unlicensed practice of medicine. 1989 Op. Att'y Gen. No. 89-49.

"Trigger-point" intramuscular injections of local anesthetic into any muscle other than the primary muscles of mastication (*i.e.*, temporalis, masseter, and internal and external pterygoids) are not within the scope of a dental license under Georgia law, and the performance of such practice or procedure by dentists constitutes the unlicensed practice of medicine. 1989 Op. Att'y Gen. No. 89-49.

Awarding disability ratings on factors other than those directly relating to jaw function (*i.e.*, mastication (chewing) and deglutition (swallowing)), or to injury to the nerves that directly innervate the mouth, teeth, gums, and jaws is not within the scope of a dental license under Georgia law, and the performance of such practice or procedure by dentists constitutes the unlicensed practice of medicine. 1989 Op. Att'y Gen. No. 89-49.

"Practice of medicine" broad enough to encompass administration of medications and provision of medical treatment. 1979 Op. Att'y Gen. No. 79-2.

Implantation of artificial hair into scalp using any form of surgical procedure constitutes practice of medicine in Georgia; as a result, the regulation of this practice is included in the authority of the Composite State Board of Medical Examiners. 1973 Op. Att'y Gen. No. 73-141.

Practice of acupuncture constitutes practice of medicine under laws of Georgia; in absence of specific regulatory action, there are no restrictions on such practice if conducted by licensed physicians. 1973 Op. Att'y Gen. No. 73-131; 1992 Op. Att'y Gen. No. U92-1.

Based on adequate administrative findings, board may conclude that practice of acupuncture constitutes "unprofessional conduct" justifying imposition of sanction with respect to physician's license to practice. 1973 Op. Att'y Gen. No. 73-131.

Practice of acupuncture constitutes practice of medicine in the State of Georgia. Any change in the status of acupuncture would have to come from the legislature in the form of a specific exemption. 1992 Op. Att'y Gen. No. U92-1.

Administration of drugs and intravenous fluids constitutes practice of

medicine and is confined to those individuals licensed to so practice or those individuals specifically exempted by statute. 1979 Op. Att'y Gen. No. 79-45.

Administration of drugs and intravenous fluids by emergency medical technicians and personnel constitutes practice of medicine. 1979 Op. Att'y Gen. No. 79-45.

Licensed nurse is not prohibited from giving intravenous medicine to patients in hospital, and such acts, if done under proper orders, would not constitute practice of medicine. 1962 Op. Att'y Gen. p. 388.

Definition of "chiropractic" is not broad enough to bring chiropractic within definition of "practice of medicine." 1972 Op. Att'y Gen. No. U72-17.

Drawing blood does not constitute practice of medicine. — Introduction of foreign object into human body for purpose of withdrawing blood for test purposes is not, per se, included within definition of practice of medicine in this state. 1965-66 Op. Att'y Gen. No. 66-156.

Piercing earlobes was not the practice of medicine 1975 Op. Att'y Gen. No. 75-60.

Interns and residents practicing under licensed physicians are not "practicing medicine". — An intern or resident practicing under supervision of

licensed physician or physicians was not practicing medicine and, therefore, may legally perform such duties as may be assigned to interns and residents by duly licensed physicians. 1963-65 Op. Att'y Gen. p. 414.

Inherent limitation as to kind or amount of drugs which may be prescribed by practitioners of healing arts in absence of any clear and unambiguous statutory command to the contrary is to those drugs which are generally accepted as being necessary or incidental to proper practice of particular branch of healing art involved. 1968 Op. Att'y Gen. No. 68-62.

Restrictions on eye care and treatment performed by physicians, optometrists, and opticians. — Physician licensed in this state is unrestricted in the eye care and treatment afforded the physician's patients including the fabrication and use of contact lenses, medicine, drugs, and surgery. An optometrist may employ any means, except drugs, medicine, or surgery, in the treatment of the human eye, including contact lenses. A dispensing optician may prepare and dispense optical devices upon the prescription of a physician or optometrist, or may duplicate lenses without a prescription. 1980 Op. Att'y Gen. No. 80-19.

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians and Surgeons and Other Healers, § 26 et seq.

C.J.S. — 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers, § 11 et seq.

ALR. — Who is physician, practitioner, etc., within the meaning of an application for an insurance policy, 56 ALR 706.

Dentist as a physician or surgeon within statutes, 115 ALR 261.

Electrical treatment as practice of medicine or surgery within statute, 115 ALR 957.

Hypnotism as illegal practice of medicine, 85 ALR2d 1128.

Validity and construction of contractual

restrictions on right of medical practitioner to practice, incident to sale of practice, 62 ALR3d 918.

Validity and construction of contractual restrictions on right of medical practitioner to practice, incident to partnership agreement, 62 ALR3d 970.

Validity and construction of contractual restrictions on right of medical practitioner to practice, incident to employment agreement, 62 ALR3d 1014.

Acupuncture as illegal practice of medicine, 72 ALR3d 1257.

Liability for interference with physician-patient relationship, 87 ALR4th 845.

43-34-22. Practicing medicine without a license; titles and abbreviations; exceptions.

(a) If any person shall hold himself or herself out to the public as being engaged in the diagnosis or treatment of disease or injuries of human beings, or shall suggest, recommend, or prescribe any form of treatment for the palliation, relief, or cure of any physical or mental ailment of any person, with the intention of receiving therefor, either directly or indirectly, any fee, gift, or compensation whatsoever, or shall maintain an office for the reception, examination, or treatment of diseased or injured human beings, or shall attach the title "M.D.," "Oph.," "D.," "Dop.," "Surgeon," "Doctor," "D.O.," "Doctor of Osteopathy," "Osteopathic Physician," or "Physician," either alone or in connection with other words, or any other word or abbreviation to his or her name indicative that he or she is engaged in the treatment of diseased, defective, or injured human beings, and shall not in any of these cases then possess a valid license to practice medicine under the laws of this state, he or she shall be deemed to be practicing medicine without complying with this article and shall be deemed in violation of this article.

(b) Nothing in this chapter shall be construed to prohibit:

- (1) Gratuitous services in cases of emergency;
- (2) The practice of the religious tenets or general beliefs of any church whatsoever;
- (3) The requiring of a fee for examination by opticians, at their established places of business, who do not prescribe or use drugs or medicines or attach to their names titles indicative that any such persons are engaged in the practice of medicine, as defined in this article;
- (4) The performance of their duties for the federal government by federal physicians, both military and civilian;
- (5) The consultation on special cases approved by the board in this state of regularly licensed physicians from other states or territories;
- (6) The licensed practice of dentistry, optometry, psychology, podiatry, or chiropractic;
- (7) The licensed practice of midwifery or nursing;
- (8) The utilization of a physician assistant to perform tasks approved by the board, and the performance of such tasks by the physician assistant; the delegation by a physician to a qualified person other than a physician assistant of any acts, duties, or functions which are otherwise permitted by law or established by

custom; and the performance of such acts, duties, or functions by such a person other than a physician assistant; or

(9) The performance of:

(A) Any medical task by a student enrolled in a medical school, osteopathic medical school, or physician assistant training program approved by the board;

(B) Any dental task by a student enrolled in a dental college approved by the Georgia Board of Dentistry; or

(C) Any nursing task by a student enrolled in a nursing program approved by the Georgia Board of Nursing

where any such task is performed under the supervision of an authorized instructor lawfully licensed in this state to perform such tasks.

(c) Nothing in this article shall be construed as preventing any person holding a valid license as a Doctor of Osteopathy on March 16, 1970, from engaging in the practice of osteopathy as the same was practiced by such person at such time, subject to biennial renewal of his or her license. Such limited renewal licenses shall not authorize the practice of obstetrics or surgery other than the minor suturing of cuts. (Ga. L. 1913, p. 101, § 6; Ga. L. 1918, p. 173, § 4; Code 1933, § 84-906; Ga. L. 1970, p. 301, § 4; Ga. L. 1972, p. 673, § 1; Code 1981, § 43-34-26; Ga. L. 1993, p. 355, § 5; Ga. L. 2004, p. 379, § 1; Code 1981, § 43-34-22, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-26 as Code Section 43-34-22; in subsection (a), inserted “or herself”, inserted “‘Osteopathic Physician,’ or ‘Physician,’” inserted “or her”, inserted “or she” twice, and substituted “article” for “chapter” twice; in subsection (b), substituted “article” for “chapter” at the end of paragraph (b)(3), inserted “approved by the board” in the middle of paragraph (b)(5), inserted “podiatry,” in paragraph (b)(6), substituted “physician” for “physician’s”

throughout paragraph (b)(8); and rewrote paragraph (b)(9); and, in the first sentence of subsection (c), substituted “article” for “chapter” and inserted “or her”.

Cross references. — Requirements pertaining to persons using term “Doctor” or “Dr.” in advertisement, business card, § 10-1-422.

Editor’s notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated former Code Section 43-34-22 as present Code Section 43-34-3.

JUDICIAL DECISIONS

Legitimate state interest in ensuring public’s ability to make informed choice of physician. — State is legitimately interested in assuring that the public have at least some of the information necessary to make an informed judgment in choosing a physician. *Oliver v.*

Morton, 361 F. Supp. 1262 (N.D. Ga. 1973).

Hospital administrator subject to provisions. — It is not error to charge the substance of former Code 1933, §§ 84-906 and 84-924 (see O.C.G.A. §§ 43-34-22 and 51-1-27) in connection

with an action against a hospital administrator who was alleged to have mixed and administered drugs for relief of discomfort to patient at the hospital as a result of which the patient suffered bromide poisoning. *Fulton Hosp. v. McDonald*, 106 Ga. App. 783, 128 S.E.2d 539 (1962).

Corporation that accepted assignment of fees from physicians for purposes of administration, billing, and collection was not practicing medicine. *Health Horizons, Inc. v. State Farm Mut. Auto. Ins. Co.*, 239 Ga. App. 440, 521 S.E.2d 383 (1999), cert. denied, 2000 Ga. LEXIS 35 (2000); cert. denied, 2004 Ga. LEXIS 241 (2004).

Mere failure to have license to practice does not authorize inference of negligence when one attempts to treat or operate on another and injures that person. *Andrews v. Lofton*, 80 Ga. App. 723, 57 S.E.2d 338 (1950).

Plaintiff must show causal relation between lack of license and injury sustained. — Allegations that duties and inhibitions imposed upon the defendant by statutes as to necessity of having a license to practice medicine or surgery were due to the plaintiff and child personally, and as members of the public seeking medical and surgical care, and that the death of the child was a natural and probable consequence of violation of such statutes by the defendant were subject to demurrer (now motion to dismiss) for failure to show anything having a causal relation to the death of the child. *Andrews v. Lofton*, 80 Ga. App. 723, 57 S.E.2d 338 (1950).

Defendant's holding self out as physician is relevant to establish why plaintiff engaged defendant's services. — Allegations that the defendant falsely held self out as a physician and surgeon, and that the defendant did not possess qualifications necessary for possession of a license are pertinent by way of history or inducement to show why the plaintiff engaged services of the defendant and for that reason should not be stricken on demurrer (now motion to dismiss), though irrelevant on question of the defendant's negligence. *Andrews v. Lofton*, 80 Ga. App. 723, 57 S.E.2d 338 (1950).

State may show defendant held self out as physician when defendant denies practice. — When main defense is that even though the defendant sold medicine, the defendant never practiced that profession, it is competent for the state to prove, if the state can, that the defendant did practice that profession generally, that the defendant held self out to public as being engaged in diagnosis or treatment of diseases, or that the defendant suggested, recommended, or prescribed medical treatment, with intention of receiving a fee therefor, or that the defendant considered self a doctor of medicine. *Lyda v. State*, 47 Ga. App. 45, 169 S.E. 751 (1933).

Notice of specific laws violated not required in preferred charges. — In preferring charges in order to revoke license, it is unnecessary to specify law under which the charges are preferred. *Hughes v. State Bd. of Medical Exmrs.*, 162 Ga. 246, 134 S.E. 42 (1926), later appeal, 165 Ga. 892, 142 S.E. 285 (1928).

Equity will not enjoin proceeding to revoke license where legal remedy provided. — Court of equity will not enjoin board from hearing proceeding brought under this statute for revocation of license of physician upon charges that physician had been convicted of a crime involving moral turpitude and had caused publication and circulation of advertisement relative to diseases of the sexual organs where physician has a complete legal remedy by making defense before board and appealing to the superior court. *Hughes v. State Bd. of Medical Exmrs.*, 158 Ga. 602, 123 S.E. 879 (1924) (see O.C.G.A. § 43-34-26).

Definition of drugs. — Drug is defined as the general name of substances used in medicines; any substance, vegetable, animal, or mineral used in composition or preparation of medicines; or any substance used as a medicine. *Shawver v. State*, 103 Ga. App. 1, 118 S.E.2d 202 (1961).

Podiatrists and allopaths distinguished from chiropractors or naturopaths and physicians. — *Sandford v. Howard*, 161 Ga. App. 495, 288 S.E.2d 739 (1982).

Continued activity by physician who surrendered medical license. — Physician who voluntarily surrendered a

physician's medical license by allowing the license to expire was not authorized to write prescriptions as it violated O.C.G.A. § 43-34-26 (now O.C.G.A. § 43-34-22), prohibiting the practice of medicine without a license; such surrender did not further require cancellation of the record of license in the office of the clerk of the Superior Court under former O.C.G.A. § 43-34-39, as such Code section only applied to revocation of licenses. *Gunnells v. Marshburn*, 259 Ga. App. 657, 578 S.E.2d 273 (2003).

Cited in Georgia State Bd. of Exmrs. in Optometry v. Friedmans' Jewelers, Inc., 183 Ga. 669, 189 S.E. 238 (1936); Georgia

Ass'n of Osteopathic Physicians & Surgeons, Inc. v. Allen, 112 F.2d 52 (5th Cir. 1940); Georgia Ass'n of Osteopathic Physicians & Surgeons, Inc. v. Allen, 31 F. Supp. 206 (M.D. Ga. 1940); *Shawver v. State*, 103 Ga. App. 1, 118 S.E.2d 202 (1961); *Reams v. Composite State Bd. of Medical Exmrs.*, 233 Ga. 742, 213 S.E.2d 640 (1975); *Reams v. Composite State Bd. of Medical Exmrs.*, 237 Ga. 224, 227 S.E.2d 346 (1976); *United States v. Composite State Bd. of Medical Exmrs.*, 656 F.2d 131 (5th Cir. 1981); *Franklin v. Elmer*, 174 Ga. App. 839, 332 S.E.2d 314 (1985).

OPINIONS OF THE ATTORNEY GENERAL

Legislative intent. — It was never the legislative intent that naturopaths be authorized to practice medicine nor be licensed as physicians. 1960-61 Op. Att'y Gen. p. 415.

"Doctors of medicine," "licensed to practice in state," includes physicians and osteopaths. — Terms "doctors of medicine," "licensed doctors of medicine," "doctors of medicine licensed to practice in the state," and similar terms used in the statute include persons who have graduated from a medical college and hold a degree of Doctor of Medicine and those who hold degree of Doctor of Osteopathy. When those terms are used to describe qualifications of physicians to be hired by the Department of Human Resources, the department may hire physicians who have either degree. 1974 Op. Att'y Gen. No. 74-50.

Not all osteopaths hold "full practice" licenses. — Since phrase "doctor of medicine who is licensed to practice in the state" refers to those persons who hold degrees as Doctors of Osteopathy as well as Doctors of Medicine, the Department of Human Resources may employ persons holding either degree; however, while all practicing osteopaths are licensed under the statutes, thus qualifying all of them to practice in state hospitals or community service programs, not all hold "full practice" licenses. 1974 Op. Att'y Gen. No. 74-50.

Practice of naturopathy by persons

other than those who were licensed pursuant to Ga. L. 1950, p. 168, or who are otherwise licensed as practitioners of healing arts in the State of Georgia, constitutes "practice of medicine" within meaning of former Code 1933, § 84-906 (see O.C.G.A. § 43-34-22); such persons who intend to practice naturopathy in Georgia must either obtain a license from the Composite State Board of Medical Examiners or from another licensing board of the healing arts whose regulatory scope would allow use of naturopathic methods in the practice of that profession. 1982 Op. Att'y Gen. No. 82-11.

Administration of medication and medical treatments by a licensed nurse, when prescribed by a physician practicing medicine in accordance with the provisions of O.C.G.A. Ch. 34, T. 43, does not constitute the proscribed practice of medicine. 1979 Op. Att'y Gen. No. 79-2.

To the extent that 1975 Op. Att'y Gen. 75-44 opines that unlicensed personnel may perform certain tasks pursuant to an established custom, when the performance of such tasks is not prohibited by another statute, that opinion is not inconsistent with the present one. However, because of amendments in the licensing acts in question, that opinion should no longer be relied upon and is expressly superseded. See former O.C.G.A. §§ 43-26-1(3) and 43-26-30(2)(D). 1985 Op. Att'y Gen. No. 85-41 (decided prior to the 1990 repeal and reenactment of Article 1 of Chapter 26 of Title 43).

Naturopath may use word "Doctor" only when followed by word "Naturopathy" or letters "N.D." 1954-56 Op. Att'y Gen. p. 544.

Naturopath may not sign a death certificate. 1957 Op. Att'y Gen. p. 339.

Naturopath may not practice obstetrics. — Practice of obstetrics involves procedures which are not embraced within the definition of naturopathy; a naturopathic physician may not conduct an obstetrical practice in this state. 1965-66 Op. Att'y Gen. No. 65-96.

Laboratories of State Health Department (now Department of Human Resources) cannot examine specimens submitted by naturopaths. 1960-61 Op. Att'y Gen. p. 415.

Practice of acupuncture constitutes practice of medicine in the State of Georgia. Any change in the status of acupuncture would have to come from the legislature in the form of a specific exemption. 1992 Op. Att'y Gen. No. U92-1.

Nurses may telephone prescription orders into pharmacy after receiving order from physician. 1979 Op. Att'y Gen. No. 79-32.

Practice of "protocol" medicine by licensed nurse does not violate law. — The practice of "protocol" medicine by a licensed nurse when prescribed by a physician practicing medicine in accordance with the statute is not the unauthorized practice of medicine by a nurse. 1979 Op. Att'y Gen. No. 79-2.

Physician shall not delegate tasks to nurse requiring application of specialized knowledge or skill. — If act involves application of specialized medical knowledge or skill, a physician is not warranted in delegating the act to a nurse; if such an act is delegated, the physician, rather than hospital, is liable for the nurse's negligence. 1967 Op. Att'y Gen. No. 67-463.

Administration and performance of artificial insemination upon female human beings may not be delegated by a licensed physician to a physician's assistant or other qualified allied health personnel. 1982 Op. Att'y Gen. No. 82-87.

Delegation to unlicensed personnel. — O.C.G.A. § 43-34-26 (now O.C.G.A. § 43-34-22) does not authorize a

physician to delegate tasks to unlicensed personnel when the performance of such tasks would otherwise require a license in an established category of health care. 1985 Op. Att'y Gen. No. 85-41.

Hearing tests. — Individual who does not possess license from Georgia State Board of Examiners for Speech Pathology and Audiology may not perform diagnostic hearing tests under supervision of a physician; however, such individual may perform routine hearing screenings under supervision of a physician. 1982 Op. Att'y Gen. No. 82-90.

Transcutaneous electrical nerve stimulation (TENS) used as a form of treatment, or the recommendation of such treatment, for the palliation, relief, or cure of physical or mental ailments of human beings constitutes the practice of medicine, unless otherwise excepted by statute. 1982 Op. Att'y Gen. No. 82-102.

Whether medication has been "prescribed" by physician is fact issue for board. — Question of whether administration of medication or provision of medical treatment has been "prescribed" by a physician practicing medicine in accordance with the statute is a factual question which must be resolved by the Composite State Board of Medical Examiners (now Georgia Composite Medical Board). 1979 Op. Att'y Gen. No. 79-2.

Interns and residents may prescribe, administer, and dispense narcotic drugs. — An intern or resident accepted for specialty or residency training in a hospital approved by the Composite State Board of Medical Examiners (now Georgia Composite Medical Board) may prescribe, administer, and dispense narcotic drugs to the extent required by the duties of the intern's or resident's position or by the program of training for a period of two years and for such additional period as the board by application may determine. 1971 Op. Att'y Gen. No. 71-157.

Determination of negligence in nurse's actions. — Since in a hospital the nurse-patient relationship is consensual rather than contractual, no liability is incurred by a nurse, a supervising physician, or a hospital when a nurse, well-trained both in recognizing signs and

symptoms of cardiac conditions and in early corrective action, and following detailed instructions of the physician undertakes to make these decisions and carries out corrective actions, providing the nurse was not negligent in some manner. A determination of negligence would necessarily involve a factual determination. 1967 Op. Att'y Gen. No. 67-463.

Scope of authority of emergency medical technician-ambulance attendant. — Emergency medical technician-ambulance attendant should be permitted to administer drugs and intravenous fluids only when directed to do so by a physician; when a physician cannot be physically present, direction through oral

communications, as by telephone or radio, is sufficient; under these circumstances, the technicians do not violate Ga. L. 1972, p. 847, § 1 (see O.C.G.A. § 43-34-26). 1973 Op. Att'y Gen. No. 73-139.

Unlicensed practice not justified. — Fact that practice of medicine is performed under supervision of licensed doctor does not justify unlicensed practice. 1970 Op. Att'y Gen. No. U70-241.

Compensation is not a necessary element to definition of practice of medicine. 1970 Op. Att'y Gen. No. U70-241.

Gratuitous service not of an emergency nature is prohibited. 1970 Op. Att'y Gen. No. U70-241.

RESEARCH REFERENCES

ALR. — Constitutionality of statute prescribing conditions of practicing medicine or surgery as affected by question of discrimination against particular school or method, 37 ALR 680; 42 ALR 1342; 54 ALR 600.

Liability to patient for results of medical or surgical treatment by one not licensed as required by law, 44 ALR 1418; 57 ALR 978.

Construction, as regards kind or character of treatment, of restrictive medical or surgical license, 86 ALR 623.

Right of corporation or individual, not

himself licensed, to practice medicine, surgery, or dentistry through licensed employees, 103 ALR 1240.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

Practicing medicine, surgery, dentistry, optometry, podiatry, or other healing arts without license as a separate or continuing offense, 99 ALR2d 654.

Acupuncture as illegal practice of medicine, 72 ALR3d 1257.

43-34-23. Delegation of authority to nurse or physician assistant.

(a) As used in this Code section, the term:

(1) "Administer" means to give a unit dose of any drug or to perform any medical treatment or diagnostic study.

(2) "Controlled substance" means any controlled substance, as defined in Code Section 16-13-21, except any Schedule I controlled substance listed in Code Section 16-13-25.

(3) "Dangerous drug" means any dangerous drug, as defined in Code Section 16-13-71, but does not include any controlled substance or Schedule I controlled substance.

(3.1) "Dispense" means to issue one or more doses of any drug in a suitable container with appropriate labeling for subsequent administration to, or use by, a patient.

(4) "Dispensing procedure" means a written document signed by a licensed pharmacist and a licensed physician which document establishes the appropriate manner under which drugs may be dispensed pursuant to this Code section.

(5) "Drug" means any dangerous drug or controlled substance.

(5.1) "Job description" shall have the same meaning as in Code Section 43-34-102.

(6) "Nurse" means a person who is a registered professional nurse licensed as such under Article 1 of Chapter 26 of this title.

(7) "Nurse protocol" means a written document mutually agreed upon and signed by a nurse and a licensed physician, by which document the physician delegates to that nurse the authority to perform certain medical acts pursuant to subsection (b) of this Code section, and which acts shall include, without being limited to, the administering and ordering of any drug.

(8) "Order" means to select a drug, medical treatment, or diagnostic study through physician delegation in accordance with a nurse protocol or a physician assistant's job description. Ordering under such delegation shall not be construed to be prescribing nor shall ordering of a drug be construed to authorize the issuance of a written prescription.

(9) "Physician assistant" means a person licensed as a physician assistant pursuant to Article 4 of this chapter, the "Physician Assistant Act."

(b)(1)(A) A physician may delegate the authority contained in subparagraph (B) of this paragraph to:

(i) A physician assistant in accordance with a job description;
or

(ii) A nurse recognized by the Georgia Board of Nursing as a certified nurse midwife, certified registered nurse anesthetist, certified nurse practitioner, or clinical nurse specialist, psychiatric/mental health in accordance with a nurse protocol.

(B) A physician may delegate to those health care professionals identified in subparagraph (A) of this paragraph:

(i) The authority to order controlled substances selected from a formulary of such drugs established by the board and the authority to order dangerous drugs, medical treatments, and diagnostic studies;

(ii) The authority to request, receive, and sign for professional samples and to distribute professional samples to patients. The

office or facility at which the health care professional identified in subparagraph (A) of this paragraph is working shall maintain a general list of the professional samples approved by the delegating physician for request, receipt, and distribution by the health care professional identified in subparagraph (A) of this paragraph as well as a complete list of the specific number and dosage of each professional sample and medication voucher received. Professional samples that are distributed by a health care professional identified in subparagraph (A) of this paragraph shall be so noted in the patient's medical record. In addition to the requirements of this Code section, all professional samples shall be maintained as required by applicable state and federal laws and regulations; and

(iii) The authority to sign, certify, and endorse all documents relating to health care provided to a patient within his or her scope of authorized practice, including, but not limited to, documents relating to physical examination forms of all state agencies and verification and evaluation forms of the Department of Human Services, the State Board of Education, local boards of education, the Department of Community Health, and the Department of Corrections; provided, however, that a health care professional identified in subparagraph (A) of this paragraph shall not have the authority to sign death certificates or assign a percentage of a disability rating.

(2) A physician may delegate to a nurse or physician assistant the authority to order dangerous drugs, medical treatments, or diagnostic studies and a nurse or physician assistant is authorized to dispense dangerous drugs, in accordance with a dispensing procedure and under the authority of an order issued in conformity with a nurse protocol or job description, if that nurse or physician assistant orders or dispenses those dangerous drugs, medical treatments, or diagnostic studies:

(A) As an agent or employee of:

(i) The Department of Public Health;

(ii) Any county board of health; or

(iii) Any organization:

(I) Which is exempt from federal taxes pursuant to Section 501(c)(3) of the Internal Revenue Code, as defined in Code Section 48-1-2, other than an organization which is a hospital, preferred provider organization, health maintenance organization, or similar organization; or

(II) Established under the authority of or receiving funds pursuant to 42 U.S.C. Section 254b or 254c of the United States Public Health Service Act,

which organization provides that those medical services and dangerous drugs which are ordered or dispensed by its physician assistants and nurses will be provided at no cost to the patient or at a cost based solely upon the patient's ability to pay; and

(B) In conformity with subsection (b) of Code Section 26-4-130 and the rules and regulations established pursuant thereto by the State Board of Pharmacy.

(3) In addition, a physician may delegate to a nurse or physician assistant the authority to order dangerous drugs, medical treatments, or diagnostic studies and a nurse or physician assistant is authorized to dispense dangerous drugs, in accordance with a dispensing procedure and under the authority of an order issued in conformity with a nurse protocol or job description, if that nurse or physician assistant orders or dispenses such drugs, treatments, or studies to a patient of an outpatient clinic:

(A) Which is owned or operated by a licensed hospital;

(B) Which provides such drugs, treatments, or studies free or at a charge to the patient based solely upon the patient's ability to pay; provided, however, such charge shall not exceed the actual cost to the outpatient clinic; and

(C) Whose services are primarily provided to the medically disadvantaged

and that nurse or physician assistant orders or dispenses such drugs in conformity with subsection (b) of Code Section 26-4-130 and the rules and regulations established pursuant thereto by the State Board of Pharmacy.

(4) Delegation of authority to a physician assistant pursuant to this subsection shall be authorized only if that delegation is contained in the job description approved for that physician assistant by the board.

(5) Delegation of authority to a nurse pursuant to this subsection shall be authorized only if that delegation is contained in a nurse protocol for that nurse.

(c) The board shall be empowered to promulgate rules and regulations governing physicians and physician assistants to carry out the intents and purposes of this Code section, including establishing criteria and standards governing physicians, physician assistants, job descriptions, and nurse protocols. The board shall be authorized to

require that protocols not falling within such established criteria and standards be submitted to the board for review and approval or rejection.

(d) Notwithstanding any other provision of law to the contrary, a physician assistant or nurse may perform any act authorized to be performed by that person pursuant to and in conformity with this Code section without such act constituting the practice of medicine.

(e) Nothing in this Code section shall be construed to limit or repeal this article and Articles 4 and 6 of this chapter, relating to physicians, osteopathic physicians, physician assistants, and respiratory therapists, or Article 1 of Chapter 26 of this title, relating to registered nurses.

(f) Nothing in this Code section shall be construed to limit or repeal any existing authority of a licensed physician to delegate to a qualified person any acts, duties, or functions which are otherwise permitted by law or established by custom.

(g) Nothing in this Code section shall be construed to authorize or permit the issuance of a Drug Enforcement Administration license to a nurse who is not an advanced practice registered nurse.

(h) Nothing in this Code section shall be construed to limit or repeal the authority of any organization described in division (i) or (ii) of subparagraph (b)(2)(A) of this Code section or any organization established under the authority of or receiving funds pursuant to 42 U.S.C. Section 254b or 254c of the United States Public Health Service Act to supervise its agents or employees or interfere with the employer and employee relationship of any such agents or employees.

(i) Notwithstanding any other provision of law to the contrary, a physician assistant or nurse may perform any act deemed necessary to provide treatment to a hospital or nursing home patient in a life-threatening situation when such act is authorized by standing procedures established by the medical staff of the hospital or nursing home. (Code 1981, § 43-34-26.1, enacted by Ga. L. 1989, p. 261, § 3; Ga. L. 1990, p. 8, § 43; Ga. L. 1991, p. 94, § 43; Ga. L. 1993, p. 91, § 43; Ga. L. 1997, p. 935, § 2; Ga. L. 1999, p. 81, § 43; Ga. L. 2002, p. 415, § 43; Ga. L. 2006, p. 125, § 8/SB 480; Ga. L. 2009, p. 453, § 1-4/HB 228; Code 1981, § 43-34-23, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509; Ga. L. 2011, p. 441, § 1/HB 303; Ga. L. 2011, p. 705, § 6-1/HB 214.)

The 2009 amendments. — The first 2009 amendment, effective July 1, 2009, substituted “Department of Community Health” for “Department of Human Resources” in division (b)(2)(A)(i). The second 2009 amendment, effective July 1,

2009, redesignated former Code Section 43-34-26.1 as Code Section 43-34-23; throughout this Code section, substituted “physician” for “physician’s”; rewrote paragraph (a)(5.1); in paragraph (a)(8), deleted “, which act can only be performed

by the physician,” following “prescribing” in the second sentence; in paragraph (a)(9), substituted “Physician” for “Physician’s” twice; in the ending undesignated paragraph of paragraph (b)(1), at the end of paragraph (b)(4), and in the first sentence of subsection (c), substituted “board” for “Composite State Board of Medical Examiners”; deleted “assistant” in the undesignated language at the end of paragraph (b)(3); and, in subsection (e), substituted “osteopathic physicians” for “osteopaths” in the middle.

The 2011 amendments. — The first 2011 amendment, effective July 1, 2011, rewrote paragraph (b)(1). The second 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Division of Public Health of the Department of Community Health” in division (b)(2)(A)(i).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1989, “this article and Articles 4 and 6” was substituted for “Articles 2, 4, and 6” in subsection (e).

Pursuant to Code Section 28-9-5, in 2009, “assistant” was inserted after “physician” in the undesignated language at the end of paragraph (b)(3).

Editor’s notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated former Code Section 43-34-23 as present Code Section 43-34-4.

Law reviews. — For article on 2006 amendment of this Code section, see 23 Georgia St. U.L. Rev. 209 (2006).

For note on 1989 enactment of this Code section, see 6 Georgia St. U.L. Rev. 304 (1989).

JUDICIAL DECISIONS

Summary judgment properly denied in medical malpractice action. — Anesthesiologist’s standing verbal order to nurses in the post-anesthesia care unit that allowed the nurses to order and administer controlled substances to patients for purposes of pain management, after which the anesthesiologist would later sign the chart authorizing their prior decisions regarding the medication, was negligence per se in violation of O.C.G.A. § 43-34-26.1 (now O.C.G.A. § 43-34-23), as the written medical protocol was not followed; however, the trial court properly denied a motion by the spouse of the patient for partial summary judgment in a medical malpractice action as the spouse had not yet proved the issue of proximate causation. *Groover v. Johnston*, 277 Ga. App. 12, 625 S.E.2d 406 (2005).

Applicability in medical malpractice action. — O.C.G.A. § 43-34-26.1

(now O.C.G.A. § 43-34-23) was applicable to a medical malpractice action asserted by a patient’s spouse against an anesthesiologist and the employer, alleging claims of negligence and negligence per se under the statute, because the issue was whether the anesthesiologist’s standing verbal order to nurses, which allowed the nurses to order and administer controlled substances to patients, was negligence per se because there was no written protocol; as the purpose of the statute was to protect the public and to provide a standard of health care in situations in which doctors delegated their authority to order, prescribe, or dispense to nurses, § 43-34-26.1 (now § 43-34-23) was applicable. *Groover v. Johnston*, 277 Ga. App. 12, 625 S.E.2d 406 (2005).

Cited in *Gillis v. Cardio TVP Surgical Assocs., P.C.*, 239 Ga. App. 350, 520 S.E.2d 767 (1999).

43-34-24. Drug therapy management; modification by pharmacist.

(a) As used in this Code section, the term “pharmacist” means a person who meets the requirements specified in Code Section 26-4-50.

(b) A physician may delegate to a pharmacist the authority to modify drug therapy as part of drug therapy management. The physician

making such delegation shall adequately supervise the application of his or her order delegating the authority to modify drug therapy. Delegation of such authority shall only be made pursuant to the physician's diagnosis, written order, and drug therapy protocol. Unless a drug therapy modification is a substitution of a generic drug which is pharmaceutically and therapeutically equivalent to the patient's initial prescription drug order pursuant to Code Section 26-4-81, that protocol shall meet the applicable requirements for issuance of prescriptions provided in Code Section 16-13-41 or 16-13-74, whichever is applicable. A drug therapy protocol issued pursuant to this subsection may authorize a pharmacist to dispense a specific drug contained in the protocol as an alternative drug which is not pharmaceutically and therapeutically equivalent to the patient's initial prescription drug order and shall be deemed to be the physician's separate and distinct prescription drug order. All protocols authorized by this subsection shall:

- (1) Identify the pharmacist who is authorized to modify drug therapy and the physician who is delegating the authority to modify drug therapy;

- (2) Indicate the physician's diagnosis of condition or disease state of the patient whose drug therapy may be modified;

- (3) Identify each patient for whom the physician has delegated the authority to modify drug therapy;

- (4) Describe specific responsibilities and parameters for modification of drug therapy and patient monitoring authorized under the protocol;

- (5) Include a statement regarding the types and categories of medication as well as the maximum and minimum dosage levels within the types and categories of medication for which the pharmacist may modify drug therapy including:

- (A) Additional procedures or plans which the pharmacist shall follow when the pharmacist modifies drug therapy; and

- (B) The method of documentation and mechanism of communication of appropriate medical care information or pharmacy care information, or both; description and required frequency of reports which shall include:

- (i) Any problems or complications encountered;

- (ii) A listing of recommendations by pharmacist; and

- (iii) A complete list of each instance in which drug therapy was modified and how such therapy was modified since the last report; and

(6) Stipulate that each such patient must be notified that the pharmacist is authorized to modify drug therapy pursuant to protocol between the pharmacist and the physician.

(c) A physician delegating the authority to modify drug therapy must be available through communications for consultation, assistance, and direction. A physician may only delegate the authority to modify drug therapy for a patient under the direct medical care and supervision of that physician.

(d) An order delegating the authority to modify drug therapy under this Code section shall not be valid for more than two years from the date such order was issued.

(e) Nothing in this Code section shall be construed to expand or change any existing authority for a pharmacist to substitute drugs under Code Section 26-4-81.

(f) Nothing in this Code section shall be construed to prohibit hospital pharmacists from participating in drug therapy management by protocol or other legal authority established or approved by a member of the hospital medical staff for the care and treatment of hospital patients. (Code 1981, § 43-34-26.2, enacted by Ga. L. 2000, p. 558, § 3; Code 1981, § 43-34-24, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-26.2 as Code Section 43-34-24.

Cross references. — Drug therapy modification certification, § 26-4-50.

Editor's notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated former Code Section 43-34-24 as present Code Section 43-34-5.

43-34-24.1. Redesignated.

Editor's notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated

former Code Section 43-34-24.1 as present Code Section 43-34-6.

43-34-25. Delegation of certain medical acts to advanced practice registered nurse; construction and limitations of such delegation; definitions; conditions of nurse protocol; issuance of prescription drug orders.

(a) As used in this Code section, the term:

(1) "Advanced practice registered nurse" shall have the same meaning as provided in paragraph (1.1) of Code Section 43-26-3.

(2) "Birthing center" means a facility or building where human births occur on a regular or ongoing basis and which is classified by the Department of Community Health as a birthing center.

(3) "Controlled substance" means any controlled substance as defined in Code Section 16-13-21 but shall not include any Schedule I controlled substance included in Code Section 16-13-25 or any Schedule II controlled substance included in Code Section 16-13-26.

(4) "Dangerous drug" means any dangerous drug as defined in Code Section 16-13-71.

(5) "Delegating physician" means a physician who has entered into a nurse protocol agreement pursuant to this Code section.

(6) "Diagnostic study" means a laboratory test, X-ray, ultrasound, or procedure used to identify a characteristic or distinguishing feature of a particular disease or condition.

(7) "Drug" means any dangerous drug or controlled substance.

(8) "Free health clinic" shall have the same meaning as provided in Code Section 51-1-29.4.

(9) "Life threatening" means an emergency situation in which a patient's life or physical well-being will be harmed if certain testing is not performed immediately.

(10) "Nurse protocol agreement" means a written document mutually agreed upon and signed by an advanced practice registered nurse and a physician, by which document the physician delegates to that advanced practice registered nurse the authority to perform certain medical acts pursuant to this Code section, and which acts may include, without being limited to, the ordering of drugs, medical devices, medical treatments, diagnostic studies, or in life-threatening situations radiographic imaging tests. Such agreements shall conform to the provisions set forth in subsection (c) of this Code section.

(11) "Order" means to prescribe pursuant to a nurse protocol agreement which drug, medical device, medical treatment, diagnostic study, or in life-threatening situations radiographic imaging test is appropriate for a patient and to communicate the same in writing, orally, via facsimile, or electronically.

(12) "Physician" means a person licensed to practice medicine under this article and:

(A) Whose principal place of practice is within this state; or

(B) Whose principal place of practice is outside this state but is within 50 miles from the location where the nurse protocol agreement is being utilized within this state.

(13) "Prescription drug order" means a written or oral order of an advanced practice registered nurse for a drug or medical device for a specific patient. Such term includes an electronic visual image

prescription drug order and an electronic data prescription drug order.

(14) "Professional sample" means a complimentary dose of a drug, medication, medication voucher, or medical device provided by the manufacturer for use in patient care.

(15) "Radiographic imaging test" means a computed tomography, magnetic resonance imaging, positron emission tomography, or nuclear medicine.

(b) In addition to and without limiting the authority granted pursuant to Code Section 43-34-23, a physician may delegate to an advanced practice registered nurse in accordance with a nurse protocol agreement the authority to order drugs, medical devices, medical treatments, diagnostic studies, or, in life-threatening situations, radiographic imaging tests.

(c) A nurse protocol agreement between a physician and an advanced practice registered nurse pursuant to this Code section shall:

(1) Be between an advanced practice registered nurse who is in a comparable specialty area or field as that of the delegating physician;

(2) Contain a provision for immediate consultation between the advanced practice registered nurse and the delegating physician; if the delegating physician is not available, the delegating physician for purposes of consultation may designate another physician who concurs with the terms of the nurse protocol agreement;

(3) Identify the parameters under which delegated acts may be performed by the advanced practice registered nurse, including without limitation the number of refills which may be ordered, the kinds of diagnostic studies which may be ordered, the extent to which radiographic image tests may be ordered, and the circumstances under which a prescription drug order may be executed. In the event the delegating physician authorizes the advanced practice registered nurse to order an X-ray, ultrasound, or radiographic imaging test, the nurse protocol agreement shall contain provisions whereby such X-ray, ultrasound, or radiographic imaging test shall be read and interpreted by a physician who is trained in the reading and interpretation of such tests; a report of such X-ray, ultrasound, or radiographic imaging test may be reviewed by the advanced practice registered nurse; and a copy of such report shall be forwarded to the delegating physician, except that such provision for an ultrasound shall not be required for an advanced practice registered nurse acting within his or her scope of practice as authorized by Code Sections 43-26-3 and 43-26-5;

(4) Require documentation either in writing or by electronic means or other medium by the advanced practice registered nurse of those

acts performed by the advanced practice registered nurse which are specific to the medical acts authorized by the delegating physician;

(5) Include a schedule for periodic review by the delegating physician of patient records. Such patient records review may be achieved with a sampling of such records as determined by the delegating physician;

(6) Provide for patient evaluation or follow-up examination by the delegating physician or other physician designated by the delegating physician pursuant to paragraph (2) of this subsection, with the frequency of such evaluation or follow-up examination based on the nature, extent, and scope of the delegated act or acts as determined by the delegating physician in accordance with paragraph (3) of this subsection and accepted standards of medical practice as determined by the board;

(7) Be reviewed, revised, or updated annually by the delegating physician and the advanced practice registered nurse;

(8) Be available for review upon written request to the advanced practice registered nurse by the Georgia Board of Nursing or to the physician by the board; and

(9) Provide that a patient who receives a prescription drug order for any controlled substance pursuant to a nurse protocol agreement shall be evaluated or examined by the delegating physician or other physician designated by the delegating physician pursuant to paragraph (2) of this subsection on at least a quarterly basis or at a more frequent interval as determined by the board.

(d) A written prescription drug order issued pursuant to this Code section shall be signed by the advanced practice registered nurse and shall be on a form which shall include, without limitation, the names of the advanced practice registered nurse and delegating physician who are parties to the nurse protocol agreement, the patient's name and address, the drug or device ordered, directions with regard to the taking and dosage of the drug or use of the device, and the number of refills. A prescription drug order which is transmitted either electronically or via facsimile shall conform to the requirements set out in paragraphs (1) and (2) of subsection (c) of Code Section 26-4-80, respectively.

(e) An advanced practice registered nurse may be authorized under a nurse protocol agreement to request, receive, and sign for professional samples and may distribute professional samples to patients. The office or facility at which the advanced practice registered nurse is working shall maintain a general list of the professional samples approved by the delegating physician for request, receipt, and distribution by the advanced practice registered nurse as well as a complete list of the

specific number and dosage of each professional sample and medication voucher received. Professional samples that are distributed by an advanced practice registered nurse shall be so noted in the patient's medical record. In addition to the requirements of this Code section, all professional samples shall be maintained as required by applicable state and federal laws and regulations.

(e.1) Except for death certificates and assigning a percentage of a disability rating, an advanced practice registered nurse may be delegated the authority to sign, certify, and endorse all documents relating to health care provided to a patient within his or her scope of authorized practice, including, but not limited to, documents relating to physical examination forms of all state agencies and verification and evaluation forms of the Department of Human Services, the State Board of Education, local boards of education, the Department of Community Health, and the Department of Corrections.

(f) A managed care system, health plan, hospital, insurance company, or other similar entity shall not require a physician or advanced practice registered nurse to be a party to a nurse protocol agreement as a condition for participation in or reimbursement from such entity.

(g) A delegating physician may not enter into a nurse protocol agreement pursuant to this Code section with more than four advanced practice registered nurses at any one time, except this limitation shall not apply to an advanced practice registered nurse that is practicing:

- (1) In a hospital licensed under Title 31;
- (2) In any college or university as defined in Code Section 20-8-1;
- (3) In the Department of Public Health;
- (4) In any county board of health;
- (5) In any free health clinic;
- (6) In a birthing center;
- (7) In any entity:

(A) Which is exempt from federal taxes pursuant to Section 501(c)(3) of the Internal Revenue Code, as defined in Code Section 48-1-2, and primarily serves uninsured or indigent Medicaid and medicare patients; or

(B) Which has been established under the authority of or is receiving funds pursuant to 42 U.S.C. Section 254b or 254c of the United States Public Health Service Act;

(8) In any local board of education which has a school nurse program; or

(9) In a health maintenance organization that has an exclusive contract with a medical group practice and arranges for the provision of substantially all physician services to enrollees in health benefits of the health maintenance organization.

(h) Nothing in this Code section shall be construed to create a presumption of liability, either civil or criminal, on the part of a pharmacist duly licensed under Chapter 4 of Title 26 who, in good faith, fills a prescription drug order of an advanced practice registered nurse issued pursuant to a nurse protocol agreement.

(i) Nothing in this Code section shall be construed to apply to the practice of a certified registered nurse anesthetist.

(j) Nothing in this Code section shall be construed to require an advanced practice registered nurse to be a party to a nurse protocol agreement in order to practice as a registered professional nurse or an advanced practice registered nurse as otherwise permitted by Article 1 of Chapter 26 of this title.

(k) Nothing in this Code section shall be construed to authorize an advanced practice registered nurse to issue a prescription drug order for a Schedule I or II controlled substance or authorize refills of any drug for more than 12 months from the date of the original order except in the case of oral contraceptives, hormone replacement therapy, or prenatal vitamins which may be refilled for a period of 24 months.

(l) Nothing in this Code section shall be construed to allow an advanced practice registered nurse to perform an abortion or to administer, prescribe, or issue a drug order that is intended to cause an abortion to occur pharmacologically.

(m) The board shall have the authority to promulgate rules and regulations governing a delegating physician in order to carry out the intents and purposes of this Code section. Further, the board shall be authorized to:

(1) Require that a nurse protocol agreement shall be filed by the delegating physician with the board within a reasonable time from the date of execution;

(2) Determine, after review of a filed nurse protocol agreement, if such nurse protocol agreement fails to meet accepted standards of medical practice as established by the board; and

(3) Require the delegating physician to amend any such noncompliant nurse protocol agreement in order to meet such accepted standards.

(n) Except for practice settings identified in paragraph (7) of subsection (g) of this Code section, it shall be unlawful for a physician to be an

employee of an advanced practice registered nurse, alone or in combination with others, if the physician is required to supervise the employing advanced practice registered nurse. Such conduct shall be subject to sanctions by the Georgia Board of Nursing as to the advanced practice registered nurse and the board as to the physician.

(o) An advanced practice registered nurse shall be allowed to make a pronouncement of death pursuant to authority delegated by the supervising physician of the advanced practice registered nurse and to certify such pronouncement in the same manner as a physician. (Code 1981, § 43-34-26.3, enacted by Ga. L. 2006, p. 125, § 9/SB 480; Ga. L. 2007, p. 47, § 43/SB 103; Ga. L. 2008, p. 12, § 2-35/SB 433; Ga. L. 2008, p. 324, § 43/SB 455; Ga. L. 2009, p. 453, § 1-4/HB 228; Code 1981, § 43-34-25, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509; Ga. L. 2011, p. 441, § 2/HB 303; Ga. L. 2011, p. 705, § 5-27/HB 214.)

The 2009 amendments. — The first 2009 amendment, effective July 1, 2009, substituted “Department of Community Health” for “Department of Human Resources” in paragraph (g)(3). The second 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-26.3 as Code Section 43-34-25; substituted “article” for “chapter” near the end of paragraph (a)(12); substituted “Code Section 43-34-23” for “Code Section 43-34-26.1” near the beginning of subsection (b); and added subsection (o).

The 2011 amendments. — The first 2011 amendment, effective July 1, 2011, in subsection (e), in the second sentence, inserted “general” in the middle, deleted “and dispensed” following “voucher received” at the end, and added the third

sentence; and added subsection (e.1). The second 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in paragraph (g)(3).

Editor’s notes. — Former Code Section 43-34-25, concerning the authority of the board to administer oaths, summon witnesses, and take testimony, was based on Ga. L. 1913, p. 101, § 13; Code 1933, § 84-915; Ga. L. 1956, p. 691, § 3; Ga. L. 1966, p. 232, § 3; Ga. L. 1967, p. 826, § 3; Ga. L. 1970, p. 301, § 12; Ga. L. 1974, p. 1156, § 5 and was repealed by Ga. L. 2009, p. 859, § 1, effective July 1, 2009.

Law reviews. — For article on 2006 enactment of this Code section, see 23 Georgia St. U.L. Rev. 209 (2006).

43-34-26. License requirement for persons engaged in practice of medicine; qualifications; evaluation program; examinations.

(a)(1)(A) Any person who wishes to obtain the right to practice medicine in this state and who was not, prior to March 16, 1970, registered or licensed to practice medicine, either by the State Board of Medical Examiners or the State Board of Examiners in Osteopathy, shall, before it shall be lawful for him or her to practice medicine in this state, make application to the board through the executive director, upon such forms and in such manner as shall be adopted and prescribed by the board, and shall obtain from the board a license to practice medicine. Any person who practices medicine without first having obtained a license shall be deemed to

have violated this article. All applicants for a license to practice medicine or for a renewal of any such license which has been revoked shall furnish the board with evidence of good moral character. Applications from candidates to practice medicine or surgery in any of its branches shall be accompanied by proof that the applicant is a graduate of some legally incorporated medical school or osteopathic medical school.

(B) The board by rule or regulation may establish standards for evaluating, inspecting, and approving any medical school or osteopathic medical school. The evaluation procedure may include consideration of reports from any outside agency having expertise in medical school or osteopathic medical school evaluation; provided, however, that the board shall make the final decision on approval of medical schools and osteopathic medical schools. Nothing contained in this Code section shall prevent the approval of medical schools outside of the United States or the licensing of graduates of medical schools outside of the United States if such schools and their graduates comply with the standards established in this Code section and by rule of the board.

(2) Each medical school or osteopathic medical school in good standing with the board shall have a minimum preliminary educational requirement of the completion of a two-year premedical college course.

(3) Graduates of board approved medical schools or osteopathic medical schools and persons who graduated on or before July 1, 1985, from medical schools or osteopathic medical schools which are not approved by the board must complete one year of a postgraduate residency training program. Persons who graduated after July 1, 1985, from medical schools or osteopathic medical schools which are not approved by the board must complete three years of residency, fellowship, or other postgraduate medical training that is approved by the Accreditation Council for Graduate Medical Education (ACGME), the American Osteopathic Association (AOA), or the board to be eligible for a license to practice medicine in this state. Current certification of any applicant by a member board of the American Board of Medical Specialties may be considered by the board as evidence that such applicant's postgraduate medical training has satisfied the requirements of this paragraph. However, before any such person shall be eligible to receive a license to practice medicine in this state, he or she shall furnish the board with satisfactory evidence of attainments and qualifications under this Code section and the rules and regulations of the board. Nothing contained in this Code section shall be construed so as to require a person who has previously passed an examination given by the board for a license to practice medicine in this state to stand another examination.

(4) If the applicant submits proof that he or she has had postgraduate training as required in paragraph (3) of this subsection and if he or she furnishes satisfactory evidence of qualifications under this article and the rules and regulations of the board, he or she shall be eligible to receive a license from the board giving him or her absolute authority to practice medicine in this state.

(5) If the date of graduation from an institution mentioned in subparagraph (B) of paragraph (1) of this subsection is on or before January 1, 1967, no proof of postgraduate training in an approved hospital need be submitted to obtain a license from the board.

(b)(1) Students who have completed the academic curriculum in residence in a foreign medical school and who:

(A) Have studied medicine at a medical school located outside of the United States, Puerto Rico, and Canada which is approved by the board; and

(B) Have completed all of the formal requirements of the foreign medical school except any postgraduate training equivalent

may substitute for the postgraduate training equivalent required by a foreign country an academic year of supervised clinical training (clinical clerkship) prior to entrance into the first year of American Medical Association approved graduate education. The supervised clinical training must be under the direction of a medical school approved by the liaison committee on medical education.

(2) Before beginning the supervised clinical training, the students must have their academic records reviewed and approved by the medical schools supervising their clinical training and shall pass the Educational Council for Foreign Medical Graduates (ECFMG) qualifying examination.

(3) Students who are judged by the sponsoring medical schools to have successfully completed the supervised clinical training shall be eligible to enter the first year of American Medical Association approved graduate training program without completing internship obligations required by the foreign country and without obtaining Educational Council for Foreign Medical Graduates (ECFMG) certification.

(c) For any applicant who has not passed a board approved licensing examination or a board approved specialty board examination or recertification examination within seven years of the date of application, the board shall determine, by an evaluation program established by rule, such person's fitness to resume active status and may require the person to complete a period of evaluated clinical experience and successful completion of an examination. The board may also require a

licensee or applicant who is subject to discipline pursuant to Code Section 43-34-9 to take and pass a clinical competency assessment or similar examination approved by the board as a condition of licensure. Nothing contained in this Code section shall be construed so as to require a person who has previously passed an examination approved by the board for a license to practice medicine in this state to stand another examination as a condition of renewal of a current unrestricted license.

(d) The board may approve any examination or examinations that it deems must be passed in order to meet the requirements for licensure. Such examinations shall be in English. The board shall establish the passing score which all applicants for licensure shall meet or exceed. If an applicant fails for the third or any subsequent time any examination which is required to be passed in order to become a licensed practitioner in this state, the applicant shall not be eligible to retake any such examination until such applicant furnishes proof of having completed one year of approved Accreditation Council for Graduate Medical Education (ACGME) postgraduate training. (Ga. L. 1909, p. 123, § 7; Civil Code 1910, § 1738; Ga. L. 1913, p. 101, §§ 6, 8, 9; Ga. L. 1918, p. 173, §§ 4, 5; Code 1933, §§ 84-907, 84-1207; Ga. L. 1935, p. 412, § 1; Ga. L. 1941, p. 352, § 1; Ga. L. 1966, p. 232, § 1; Ga. L. 1967, p. 826, § 1; Ga. L. 1970, p. 301, § 5; Ga. L. 1972, p. 847, § 1; Ga. L. 1976, p. 403, § 1; Ga. L. 1977, p. 334, § 2; Ga. L. 1978, p. 1381, § 1; Code 1981, § 43-34-27; Ga. L. 1983, p. 881, § 1; Ga. L. 1984, p. 1067, § 1; Ga. L. 1992, p. 2062, § 4; Ga. L. 1993, p. 91, § 43; Ga. L. 1999, p. 296, §§ 22, 25; Ga. L. 2005, p. 526, § 1/HB 608; Code 1981, § 43-34-26, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509; Ga. L. 2010, p. 878, § 43/HB 1387.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-27 as Code Section 43-34-26; re-wrote subsection (a); in subsection (b), substituted “approved by the board” for “recognized by the World Health Organization” at the end of subparagraph (b)(1)(A), substituted “any postgraduate training equivalent” for “internship or social service” at the end of subparagraph (b)(1)(B) and near the beginning of the ending undesignated paragraph (b)(1), and deleted “social service or” preceding “internship” in subparagraph (b)(1)(C); deleted former subsection (c); and added subsections (c) and (d).

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, substituted “one year of approved Accreditation Council for

Graduate Medical Education (ACGME) postgraduate training” for “postgraduate one year of approved Accreditation Council for Graduate Medical Education (ACGME) training.” in the last sentence of subsection (d).

Cross references. — English designated as official language, § 50-3-100.

Editor’s notes. — The State Board of Medical Examiners and the State Board of Examiners in Osteopathy, referred to in subparagraph (a)(1)(A) of this Code section, were merged by Ga. L. 1970, p. 301, § 3, to form the Composite State Board of Medical Examiners (now Georgia Composite Medical Board).

Ga. L. 1999, p. 296, § 27, not codified by the General Assembly, provides that: “This Act shall become effective on July 1, 1999, except that Sections 12, 13, and 25

of this Act and any other provisions of this Act relating to the transfer of the Composite State Board of Medical Examiners from the jurisdiction of the Secretary of State shall not become effective upon July 1, 1999, if the Governor by executive order issued before that date determines such transfer to be impracticable on that date, in which event those sections and provi-

sions shall become effective upon the effective date specified in that executive order but no later than July 1, 2000." No such executive order was issued.

Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated former Code Section 43-34-26 as present Code Section 43-34-22.

JUDICIAL DECISIONS

Right to practice medicine is a valuable property right, in which, under the Constitution and laws of the state, one is entitled to be protected and secure. *Yeargin v. Hamilton Mem. Hosp.*, 225 Ga. 661, 171 S.E.2d 136 (1969), cert. denied, 397 U.S. 963, 90 S. Ct. 997, 25 L. Ed. 2d 255 (1970), later appeal, 229 Ga. 870, 195 S.E.2d 8 (1972).

Medical license is "property" for purposes of forfeiture under 21 U.S.C. § 853. *United States v. Dicter*, 198 F.3d 1284 (11th Cir. 1999), cert. denied, 531 U.S. 828, 121 S. Ct. 77, 148 L. Ed. 2d 40 (2000).

License to practice medicine is not a contract, and gives licensee no right to continue in practice in future unrestricted, and such license may be revoked for good cause, and such revocation alone is not a taking of property without due process of law. *Hughes v. State Bd. of Medical Exms.*, 162 Ga. 246, 134 S.E. 42 (1926).

State's right to set standards and exclude unqualified practitioners. — State has broad powers to regulate businesses and professions within the state's boundaries, especially when the profession deals so directly with the health and welfare of the people of the state. The state can thus exclude from the practice of medicine those whom the state finds not to be qualified and can set standards for qualification. *Oliver v. Morton*, 361 F. Supp. 1262 (N.D. Ga. 1973).

Regulatory law leaving field open to those possessing prescribed qualifications is permissible. — Statute regulating right to practice medicine, but leaving field open to all who possess prescribed qualifications, does not abridge privileges or immunities of citizens in violation of U.S. Const., Art. XIV, Sec. I.

Yeargin v. Hamilton Mem. Hosp., 225 Ga. 661, 171 S.E.2d 136 (1969), cert. denied, 397 U.S. 963, 90 S. Ct. 997, 25 L. Ed. 2d 255 (1970), later appeal, 229 Ga. 870, 195 S.E.2d 8 (1972).

Board's refusal of examination because of improper application not jury question. — Refusal of board to permit person to take examination required of applicants for licenses to practice medicine when such person fails or refuses or is unable for lack of educational qualifications or for other reasons, to make application in form and manner prescribed by the board, is not a judgment from which the defendant may appeal to the jury in a superior court. *Berkeley v. State*, 74 Ga. App. 711, 41 S.E.2d 265 (1947).

Mere failure to have license to practice does not authorize inference of negligence when one attempts to treat or operate on another and injures that person. *Andrews v. Lofton*, 80 Ga. App. 723, 57 S.E.2d 338 (1950).

Showing required of physician seeking to recover value of services rendered. — In action by physician and surgeon to recover value of professional services rendered, burden is on the physician/surgeon to prove that the plaintiff is a physician, that the plaintiff was employed as such, that the physician/surgeon rendered the services alleged, and to show the value of such services as represented by ordinary and reasonable price for services of that nature. *Yeates v. Boyd*, 50 Ga. App. 331, 177 S.E. 921 (1935).

Plaintiff must show causal relation between lack of license and injury sustained. — Allegations that duties and inhibitions imposed upon the defendant by statutes as to necessity of having a

license to practice medicine or surgery were due to the plaintiff and the child personally, and as members of the public seeking medical and surgical care, and that death of child was a natural and probable consequence of violation of such statutes by the defendant were subject to demurrer (now motion to dismiss) for failure to show anything having a causal relation to the death of the child. *Andrews v. Lofton*, 80 Ga. App. 723, 57 S.E.2d 338 (1950).

Defendant's holding self out as physician is relevant to establish why plaintiff engaged defendant's services. — Allegations made that the defendant falsely held self out as a physician and surgeon, and that the defendant did

not possess qualifications necessary for possession of a license are pertinent by way of history or inducement as to why the plaintiff engaged services of the defendant and for that reason should not be stricken on demurrer (now motion to dismiss), though irrelevant on the question of the defendant's negligence. *Andrews v. Lofton*, 80 Ga. App. 723, 57 S.E.2d 338 (1950).

Cited in Georgia Ass'n of Osteopathic Physicians & Surgeons, Inc. v. Allen, 112 F.2d 52 (5th Cir. 1940); *Doe v. Bolton*, 410 U.S. 179, 93 S. Ct. 739, 35 L. Ed. 2d 201 (1973); *Blue Cross of Georgia/Atlanta, Inc. v. Grenwald*, 148 Ga. App. 486, 251 S.E.2d 585 (1978); *Sandford v. Howard*, 161 Ga. App. 495, 288 S.E.2d 739 (1982).

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Board may disapprove internship program admitting academically unqualified persons. — Internship taken prior to graduation is not disqualified; however, the Composite State Board of Medical Examiners (now Georgia Composite Medical Board) may exercise the board's authority to disapprove internship programs accepting persons not academically prepared to practice as an intern. 1972 Op. Att'y Gen. No. 72-76.

Applicant must be graduate of approved medical school before the applicant is eligible to take examination given by Composite State Board of Medical Examiners. 1972 Op. Att'y Gen. No. 72-26.

Licensee may practice all branches of medicine. — State of Georgia, acting through State Board of Medical Examiners (now Georgia Composite Medical Board), does not license persons to prac-

tice a particular branch of medicine but licenses persons with "absolute authority to practice medicine in this state." 1968 Op. Att'y Gen. No. 68-90.

Osteopaths holding full practice licenses were included within term "licensed doctors of medicine" as that term was used in former Code 1933, §§ 84-907 and 84-1207 (see O.C.G.A. § 33-19-13). 1971 Op. Att'y Gen. No. 71-133.

Terms "doctors of medicine," "licensed doctors of medicine," "doctors of medicine licensed to practice in the state," and similar terms used in the statutes include persons who have graduated from a medical college and hold a degree of Doctor of Medicine and those who hold the degree of Doctor of Osteopathy. When those terms are used to describe qualifications of physicians to be hired by the Department of Human Resources, the department may hire physicians who have either degree. 1974 Op. Att'y Gen. No. 74-50.

RESEARCH REFERENCES

ALR. — Constitutionality of statute prescribing conditions of practicing medicine or surgery as affected by question of discrimination against particular school or method, 16 ALR 709; 37 ALR 680; 42 ALR 1342; 54 ALR 600.

Hypnotism as illegal practice of medicine, 85 ALR2d 1128.

Compelling admission to membership in professional association or society, 89 ALR2d 964.

Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

Recovery back of money paid to unlicensed person required by law to have

occupational or business license or permit to make contract, 74 ALR3d 637.

Tort claim for negligent credentialing of physician, 98 ALR5th 533.

Rights as to notice and hearing in proceeding to revoke or suspend license to practice medicine, 10 ALR5th 1.

43-34-26.1. Influenza vaccine protocol agreements.

(a) As used in this Code section, the term:

(1) “Administer” means the provision of a unit dose of influenza vaccine by a pharmacist or nurse pursuant to an influenza vaccine order contained in an influenza vaccine protocol agreement with a physician.

(2) “Adverse event” means an event that is a negative consequence of the administration of influenza vaccine by a pharmacist or nurse that results in an unintended reaction, injury, or illness, which may or may not have been preventable.

(3) “Board” means the Georgia Composite Medical Board.

(4) “Influenza vaccine” means an inactivated virus administered by injection or a live attenuated virus administered by nasal spray that is prepared for the applicable season and that is administered to produce or increase immunity to the influenza virus; provided, however, that a live attenuated virus shall not be administered pursuant to this Code section to any individual younger than 13 or older than 49 years of age; and provided, further, that a live attenuated virus shall not be administered pursuant to this Code section unless the patient or his or her parent, if a minor, has signed an informed consent that he or she does not have a contraindication to this vaccine. The informed consent form shall list the contraindications to the vaccine.

(5) “Influenza vaccine order” means a prescription drug order, contained in an influenza vaccine protocol agreement, for influenza vaccine issued by a physician for a group of patients who meet certain criteria and to be administered by a pharmacist or a nurse. An influenza vaccine order shall also mean a prescription drug order, contained in an influenza vaccine protocol agreement, for epinephrine issued by a physician for a group of patients who meet certain criteria and to be administered by a pharmacist or a nurse only upon the occurrence of an actual or perceived anaphylactic adverse reaction to the administered influenza vaccine provided that the influenza vaccine protocol agreement sets forth the signs and symptoms that warrant the administration of epinephrine.

(6) “Influenza vaccine protocol agreement” means a written document mutually agreed upon and signed by a physician and a

pharmacist or by a physician and a nurse, by which document the physician prescribes influenza vaccine and epinephrine, if determined appropriate by the physician, by means of an influenza vaccine order for administration by a pharmacist or a nurse.

(7) "Nurse" means a registered professional nurse as defined in paragraph (9) of Code Section 43-26-3. The term shall also mean a licensed practical nurse as defined in paragraph (5) of Code Section 43-26-32 who is regularly employed by a physician who actively engaged in the private practice of medicine.

(8) "Pharmacist" means an individual licensed under Chapter 4 of Title 26 to engage in the practice of pharmacy in the State of Georgia.

(9) "Pharmacy intern" means a pharmacy intern as defined in paragraph (19) of Code Section 26-4-5.

(10) "Physician" means an individual licensed to practice medicine and surgery pursuant to this article and whose principal place of practice is located in this state.

(b) A physician engaged in the active practice of medicine may prescribe influenza vaccine for a group of patients via an influenza vaccine order contained in an influenza vaccine protocol agreement to be administered by a pharmacist, provided the physician is registered with the vaccination registry established by the Department of Public Health pursuant to Code Section 31-12-3.1, commonly known as the Georgia Registry of Immunization Transactions and Services, the pharmacist is located within the county of the physician's place of registration with the vaccination registry or a county contiguous thereto, and the pharmacist holds current certification in Basic Cardiac Life Support and has completed a course of training accredited by the Accreditation Council for Pharmacy Education or similar health authority or professional body approved by the State Board of Pharmacy. A physician who is a party to an influenza vaccine protocol agreement may also prescribe epinephrine via an influenza vaccine order contained in an influenza vaccine protocol agreement for administration by a pharmacist upon the occurrence of an actual or perceived anaphylactic adverse reaction to the administered influenza vaccine provided that the influenza vaccine protocol agreement sets forth the signs and symptoms that warrant the administration of epinephrine.

(c) A physician engaged in the active practice of medicine may prescribe influenza vaccine for a group of patients via an influenza vaccine order contained in an influenza vaccine protocol agreement to be administered by a nurse, provided the physician is registered with the vaccination registry established by the Department of Public Health pursuant to Code Section 31-12-3.1, commonly known as the Georgia Registry of Immunization Transactions and Services, the nurse

is located within the county of the physician's place of registration with the vaccination registry or a county contiguous thereto, and the nurse holds current certification in Basic Cardiac Life Support. A physician who is a party to an influenza vaccine protocol agreement may also prescribe epinephrine via an influenza vaccine order contained in an influenza vaccine protocol agreement for administration by a nurse upon the occurrence of an actual or perceived anaphylactic adverse reaction to the administered influenza vaccine—provided that the influenza vaccine protocol agreement sets forth the signs and symptoms that warrant the administration of epinephrine.

(d) An influenza vaccine protocol agreement between a physician and a pharmacist or a physician and a nurse pursuant to this Code section shall, without limitation:

(1) Contain the current names, addresses, telephone numbers, and professional license numbers of the physician and the pharmacist or nurse;

(2) Contain a provision for immediate consultation between the pharmacist or nurse and the physician. If the physician is not available, the physician for purposes of consultation may designate another physician who concurs with the terms of the influenza vaccine protocol agreement;

(3) Require the pharmacist or nurse to provide the influenza vaccine recipient with the appropriate and current Vaccine Information Statement (VIS) as provided by the federal Centers for Disease Control and Prevention;

(4) Require the pharmacist or nurse or his or her employer to retain documentation of each dose of influenza vaccine administered. Such documentation shall include, but not be limited to:

(A) The administering pharmacist's or nurse's name, address, telephone number, and professional license number;

(B) The name, dose, manufacturer, and lot number of the influenza vaccine;

(C) The vaccine recipient's name, address, date of birth, and telephone number;

(D) The date of administration and injection site;

(E) A signed and dated consent form by which the vaccine recipient acknowledges receipt of the VIS and consents to the administration of the influenza vaccine; and

(F) Any adverse events or complications that occur;

(5) Require the pharmacist or nurse to enter the patient's influenza vaccine information in the Georgia Registry of Immunization

Transactions and Services within the registry's designated time frame, or as designated by the Department of Public Health;

(6) Require, as a condition of administration of the influenza vaccine, the influenza vaccine recipient to remain under the observation of the administering pharmacist or nurse for a period of not less than 15 minutes immediately subsequent to the administration of the influenza vaccine;

(7) Contain procedures to follow up on the occurrence of an adverse event or complication including, if prescribed via an influenza vaccine order contained in an influenza vaccine protocol agreement, the administration of epinephrine;

(8) Provide for prioritization of influenza vaccine recipients in the event the supply of influenza vaccine is limited; and

(9) Be renewed and, if necessary, revised or updated biennially by the physician and the pharmacist or nurse. An influenza vaccine protocol agreement that is not renewed biennially shall expire.

(e) A pharmacist who is a party to an influenza vaccine protocol agreement pursuant to this Code section shall not delegate the administration of influenza vaccine to any individual other than a pharmacy intern under the direct supervision of the pharmacist whether or not any such other individual is under the supervision, direct or otherwise, of the pharmacist.

(f) A nurse who is a party to an influenza vaccine protocol agreement pursuant to this Code section shall not delegate the administration of influenza vaccine to any individual, whether or not any such individual is under the supervision, direct or otherwise, of the nurse; provided, however, notwithstanding the requirement of employment by a physician in paragraph (7) of subsection (a) of this Code section, a registered professional nurse who is a party to an influenza vaccine protocol agreement pursuant to this Code section may delegate the administration of influenza vaccine to a licensed practical nurse under the direct on-site supervision of the registered professional nurse.

(g) Notwithstanding any law to the contrary, a nurse acting pursuant to an influenza vaccine protocol agreement as provided in this Code section may possess and transport influenza vaccine and epinephrine.

(h) A pharmacist or nurse administering influenza vaccines pursuant to an influenza vaccine protocol agreement authorized by this Code section shall maintain policies and procedures for the handling and disposal of used or contaminated equipment and supplies.

(i) Nothing in this Code section shall be construed to authorize a physician to prescribe any vaccines or other drugs pursuant to an

influenza vaccine protocol agreement or influenza vaccine order contained in an influenza vaccine protocol agreement other than influenza vaccines and epinephrine.

(j) A delegating physician may not enter into an influenza vaccine protocol agreement with more than ten pharmacists or nurses, or any combination thereof, at any one time; provided, however, and notwithstanding the geographic limitations provided in subsections (b) and (c) of this Code section, a delegating physician may enter into an influenza vaccine protocol agreement with more than ten pharmacists or nurses, or any combination thereof, at any one time so long as the pharmacists or nurses are in the same public health district as established pursuant to Code Section 31-3-15 and are employees or agents of the same corporate entity.

(k) It shall be unlawful for a physician who is employed by a pharmacist or nurse to enter into an influenza vaccine protocol agreement or otherwise delegate medical acts to such pharmacist or nurse. It shall be unlawful for a physician who is employed by a pharmacy to enter into an influenza vaccine protocol agreement or otherwise delegate medical acts to a pharmacist or nurse who is also employed by such pharmacy.

(l) The board shall have the authority to promulgate rules and regulations governing a physician who is a party to an influenza vaccine protocol agreement in order to carry out the intent and purposes of this Code section. Further, the board shall:

(1) Require that the influenza vaccine protocol agreement be filed by the physician with the board and be made available by the board for public inspection; and

(2) Promulgate by rule an approved standard protocol template that may be utilized as an influenza vaccine protocol agreement and make such template available on the board's website.

(m) Nothing in this Code section shall be construed to require a physician to enter into an influenza vaccine protocol agreement. A public or private managed care system, health plan, hospital, insurance company, or similar entity shall not require a physician, pharmacist, or nurse to enter into an influenza vaccine protocol agreement as a condition for participation in or reimbursement from such entity.

(n) No physician who complies with the provisions of this Code section shall be subject to criminal or civil liability or discipline for unprofessional conduct for:

(1) Entering into an influenza vaccine protocol agreement with a pharmacist or nurse;

(2) Issuing an influenza vaccine order contained in an influenza vaccine protocol agreement with a pharmacist or nurse; or

(3) The acts or omissions of a pharmacist or nurse pursuant to an influenza vaccine protocol agreement including the administration of influenza vaccine or epinephrine.

Nothing in this subsection shall be interpreted as altering liability of an employer for acts of his or her employees.

(o) This Code section shall not apply to any activities conducted within a hospital or within any other facility or entity owned, operated, or leased by a hospital.

(p) This Code section shall not be interpreted as limiting the authority of any authorized person to dispense or administer influenza vaccine or other medications.

(q) No influenza vaccine protocol agreement entered into pursuant to this Code section shall permit a pharmacist or nurse to administer an influenza vaccine to any child under the age of 13 without an individual prescription from a physician, and consent of the child's parent or legal guardian shall be a condition precedent to the administration of an influenza vaccine to a child under the age of 18. (Code 1981, § 43-34-26.1, enacted by Ga. L. 2009, p. 184, § 1/HB 217; Ga. L. 2010, p. 530, § 1/HB 1154; Ga. L. 2010, p. 878, § 43/HB 1387; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2011, p. 752, § 43/HB 142.)

Effective date. — This Code section became effective April 28, 2009.

The 2010 amendments. — The first 2010 amendment, effective July 1, 2010, substituted the present provisions of paragraph (a)(4) for the former provisions, which read: "Influenza vaccine" means a vaccine administered by injection that contains inactivated influenza viruses that is prepared for the applicable season and that is administered to produce or increase immunity to the influenza virus." The second 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, deleted "a" preceding "certain criteria" in both sentences in paragraph (a)(5); substituted "who is" for "that is" near the beginning of subsections (e) and (f); and revised punctuation in subsection (j).

The 2011 amendments. — The first 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" in the first sentences of subsec-

tion (b) and (c), and in paragraph (d)(5). The second 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted "patients who meet" for "patients that meet" twice in paragraph (a)(5).

Cross references. — Influenza vaccinations for discharged patients aged 65 and older, § 31-7-18.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, Code Section 43-34-26.4, as enacted by Ga. L. 2009, p. 184, § 1, was redesignated as Code Section 43-34-26.1; "Georgia Composite Medical Board" was substituted for "Composite State Board of Medical Examiners" in paragraph (a)(3); "Department of Community Health" was substituted for "Department of Human Resources" in subsections (b) and (c) and in paragraph (d)(5); "with" was inserted in the first sentence of subsection (c); and "a registered professional nurse who" was substituted for "at a registered professional nurse that" in subsection (f).

Pursuant to Code Section 28-9-5, in 2011, “Georgia” was deleted preceding “State Board of Pharmacy” at the end of the first sentence in subsection (b).

Editor’s notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated former Code Section 43-34-26.1 as present Code Section 43-34-23.

43-34-26.2. Redesignated.

Editor’s notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated former Code Section 43-34-26.2 as present Code Section 43-34-24.

43-34-26.3. Redesignated.

Editor’s notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated former Code Section 43-34-26.3 as present Code Section 43-34-25.

43-34-27. Licensing aliens; licensing Canadian medical school graduates.

Any qualified applicant who is an alien, except for graduates of accredited Canadian medical schools as approved by the board, must have resided in the United States for one year. All qualified applicants who are aliens and who shall comply with all other requirements of this article shall be eligible to stand the examination provided for in this article and, upon his or her successful completion thereof, shall be granted a license to practice medicine upon compliance with all other requirements prescribed as a prerequisite to the issuance of a license. Graduates of accredited Canadian medical schools, as approved by the board, are exempt from the residency requirement of one year in the United States and may be granted a license by endorsement of the Licentiate Medical Counsel of Canada (LMCC) examination without further examination if the board determines that the applicant substantially meets the qualifications required for licensure in this state. (Ga. L. 1925, p. 89, § 1; Code 1933, § 84-1208; Ga. L. 1966, p. 346, § 2; Code 1933, § 84-907.5, enacted by Ga. L. 1971, p. 223, § 2; Ga. L. 1977, p. 334, § 6; Ga. L. 1980, p. 3, § 1; Code 1981, § 43-34-28; Code 1981, § 43-34-27, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-28 as Code Section 43-34-27; in the second sentence, substituted “article” for “chapter” twice and inserted “or her” in the middle.

Cross references. — Rights of aliens, § 1-2-11.

Editor’s notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated former Code Section 43-34-27 as present Code Section 43-34-26.

JUDICIAL DECISIONS

Cited in Emory Adventist, Inc. v. Hunter, 301 Ga. App. 215, 687 S.E.2d 267 (2009).

RESEARCH REFERENCES

ALR. — Constitutionality of discrimination against aliens in legislation relating to licenses, 39 ALR 346.

43-34-28. Reciprocity.

The board may grant a license without examination to licensees of boards of other states requiring equal or higher qualifications. (Ga. L. 1913, p. 101, § 12; Ga. L. 1918, p. 173, § 7; Code 1933, § 84-914; Ga. L. 1962, p. 611, § 2; Ga. L. 1966, p. 232, § 2; Ga. L. 1967, p. 826, § 2; Ga. L. 1969, p. 718, § 2; Ga. L. 1970, p. 301, § 11; Code 1981, § 43-34-29; Ga. L. 1984, p. 1067, § 2; Code 1981, § 43-34-28, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-29 as Code Section 43-34-28; and rewrote this Code section.

Cross references. — Cooperation between Georgia and other states generally, T. 28, C. 6.

Editor's notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated former Code Section 43-34-28 as present Code Section 43-34-27.

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Preclusion of pre-July 1, 1963 osteopathic graduates from reciprocal licensing. — Former Code 1933, § 84-914 even though apparently displaying a legislative intent to grant reciprocity to some pre-July 1, 1963 osteopathic graduates (i.e., ones who graduated from schools

which were approved at the time of graduation), effectively excluded all such graduates from reciprocity privileges, since neither Osteopathic Board, Medical Board, nor Composite Board ever officially approved an osteopathic college prior to 1971. 1973 Op. Att'y Gen. No. 73-31.

43-34-29. Issuance of teacher's license to licensed physicians of other states and foreign countries; renewal.

Notwithstanding any other law to the contrary, the board may issue, in its discretion, without examination, a teacher's license to licensed physicians of other states and foreign countries for the sole purpose of teaching or demonstrating medicine in a board approved medical college or its affiliated clinic in this state. If issued after January 1, 1999, a teacher's license shall be valid for up to two years and may only be renewed, at the board's discretion, for one additional year. (Code 1981, § 43-34-29.1, enacted by Ga. L. 1987, p. 407, § 1; Code 1981, § 43-34-29, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section

43-34-29.1 as Code Section 43-34-29; and added the last sentence.

Editor's notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated former Code Section 43-34-29 as present Code Section 43-34-28.

43-34-29.1. Redesignated.

Editor's notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated former Code Section 43-34-29.1 as present Code Section 43-34-29.

43-34-30. Out-of-state physicians entering state for consultation; establishment of offices by out-of-state physicians.

Licensed physicians of other states and foreign countries may be permitted to enter this state for consultation with any licensed physician of this state. A physician from another state or from a foreign country shall not be permitted to establish offices in this state for the practice of his or her profession, either temporary or permanent, or practice under another physician's license, unless he or she obtains a license from the board. (Ga. L. 1939, p. 319, § 1a; Code 1981, § 43-34-31; Ga. L. 1983, p. 3, § 32; Code 1981, § 43-34-30, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509; Ga. L. 2010, p. 878, § 43/HB 1387.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-31 as Code Section 43-34-30; in the second sentence, inserted "or her" and inserted "or she"; and deleted the former last sentence which read: "A license may be issued to a physician of another state or a foreign country by comity or reciprocity if the standards for medical licensure of such a state or foreign country equal those of this state, and after such state or foreign country agrees to license physicians of this state on a like basis, provided such agreements are not in conflict with this article."

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, revised punctuation in this Code section.

Cross references. — Cooperation between Georgia and other states generally, T. 28, C. 6.

Editor's notes. — Former Code Section 43-34-30, concerning issuance of a license to an alien who is licensed by another state, was based on Code 1933, § 84-907.6, enacted by Ga. L. 1973, p. 226, § 1; Ga. L. 1977, p. 334, § 7 and was repealed by Ga. L. 2009, p. 859, § 1, effective July 1, 2009.

RESEARCH REFERENCES

ALR. — Judicial review of decision upon application for license to practice within state by physician or surgeon from another state or country, 136 ALR 742.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

43-34-31. Practice of medicine from foreign jurisdiction by electronic means; exceptions; patient records; confidentiality.

(a) A person who is physically located in another state or foreign country and who, through the use of any means, including electronic, radiographic, or other means of telecommunication, through which medical information or data are transmitted, performs an act that is part of a patient care service located in this state, including but not limited to the initiation of imaging procedures or the preparation of pathological material for examination, and that would affect the diagnosis or treatment of the patient is engaged in the practice of medicine in this state. Any person who performs such acts through such means shall be required to have a license to practice medicine in this state and shall be subject to regulation by the board. Any such out-of-state or foreign practitioner shall not have ultimate authority over the care or primary diagnosis of a patient who is located in this state.

(b) This Code section shall not apply to:

(1) The acts of a doctor of medicine or doctor of osteopathic medicine located in another state or foreign country who:

(A) Provides consultation services at the request of a physician licensed in this state; and

(B) Provides such services on an occasional rather than on a regular or routine basis;

(2) The acts of a physician or osteopathic physician licensed in another state or foreign country who:

(A) Provides consultation services in the case of an emergency;

(B) Provides consultation services without compensation, remuneration, or other expectation thereof; or

(C) Provides consultation services to a medical school which is located within this state and approved by the board; or

(3) The acts of a physician or osteopathic physician located in another state or foreign country when invited as a guest of any medical school or osteopathic medical school approved by the board or a state medical society or component thereof, for the sole purpose of engaging in professional education through lectures, clinics, or demonstrations, provided that such physician or osteopathic physician is licensed to practice medicine or osteopathic medicine in the state or foreign country in which he or she is located.

(c) This Code section shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health

care services in a setting or in a manner not otherwise authorized by the laws of this state.

(d) All persons subject to the provisions of this Code section shall be required to comply with all applicable requirements of the laws of this state relating to the maintenance of patient records and the confidentiality of patient information, regardless of where such physician or health care provider may be located and regardless of where or how the records of any patient located in this state are maintained. (Code 1981, § 43-34-31.1, enacted by Ga. L. 1997, p. 697, § 1; Code 1981, § 43-34-31, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-31.1 as Code Section 43-34-31; in the first sentence of subsection (a), substituted “data are” for “data is”; and, in subsection (b), substituted “osteopathic physician” for “osteopath” throughout the subsection, in paragraph (b)(1), substituted “osteopathic medicine” for “osteopathy”, and, in paragraph (b)(3), inserted “or

osteopathic medial school” and substituted “osteopathic medicine” for “osteopathy”.

Editor’s notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated former Code Section 43-34-31 as present Code Section 43-34-30.

Law reviews. — For article commenting on the enactment of this Code section, see 14 Georgia St. U.L. Rev. 238 (1997).

43-34-31.1. Redesignated.

Editor’s notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated

former Code Section 43-34-31.1 as present Code Section 43-34-31.

43-34-32. Temporary licenses.

The executive director, with the approval of the chairperson of the board, may in his or her discretion issue a temporary license to an applicant, which license shall have the same force and effect as a permanent license until the next regular meeting of the board when the temporary license shall become void. (Ga. L. 1913, p. 101, § 10; Ga. L. 1918, p. 173, § 10; Code 1933, § 84-912; Ga. L. 1999, p. 296, § 25; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, substituted “chairperson” for “president”, inserted “or her”, and deleted the former last sentence which read: “A temporary license shall not be recorded.”

Editor’s notes. — Ga. L. 1999, p. 296, § 27, not codified by the General Assembly, provides that: “This Act shall become effective on July 1, 1999, except that Sections 12, 13, and 25 of this Act and any other provisions of this Act relating to the transfer of the Composite State Board of

Medical Examiners from the jurisdiction of the Secretary of State shall not become effective upon July 1, 1999, if the Governor by executive order issued before that date determines such transfer to be impracticable on that date, in which event those sections and provisions shall become effective upon the effective date specified in that executive order but no later than July 1, 2000.” No such executive order was issued.

43-34-33. Institutional licenses.

(a) Notwithstanding any other law to the contrary, under exceptional circumstances the board may consider applications from institutions on behalf of physicians who are graduates of international medical schools who the institution wishes to employ but who do not have independent licenses to practice medicine in the State of Georgia. The board shall review the credentials of physicians to ensure that they have adequate training and experience and have confirmation of supervisory oversight of any such physician, prior to awarding any such institutional license. The institutional license shall be jointly awarded to the institution and the physician, indicating that the license to practice medicine is limited to that institution and under proper medical supervision in accordance with this Code section. The institutional license may be renewable biennially, so long as the licensee remains in the employ of the institution requesting the license, provided that such institutional license shall not be prima-facie evidence that the holder thereof meets the minimum basic requirements for examination by the board or for the issuance of a permanent license to practice medicine.

(b) A person issued an institutional license pursuant to this Code section shall not engage in the private practice of medicine and shall not receive fees or any other remuneration from his or her patients. Persons practicing medicine pursuant to an institutional license issued in accordance with this Code section shall receive as their sole remuneration for the practice of medicine the salary and other remuneration paid by the institution. The license of any person who violates this Code section shall be subject to revocation by the board after notice and opportunity for hearing.

(c) Any physician applying for an institutional license who meets all other requirements of the board must also furnish documentation of one year of American Medical Association or American Osteopathic Association approved postgraduate training (internship or residency), or other training acceptable to the board.

(d) Institutional license holders shall not be permitted to apply for a Drug Enforcement Agency registration number to write prescriptions to be filled outside the institution. (Ga. L. 1939, p. 319, § 2; Ga. L. 1950, p. 362, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 179, § 1; Ga. L. 1955, p. 575, § 1; Ga. L. 1958, p. 619, § 1; Ga. L. 1970, p. 301, § 13; Ga. L. 1977, p. 332, § 2; Ga. L. 1977, p. 334, § 9; Ga. L. 1978, p. 223, § 1; Ga. L. 1983, p. 720, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, rewrote subsection (a); deleted former subsection (b) which read: "Any residency requirement may be waived at

the discretion of the board if a job description is submitted to the board indicating that the applicant's duties in one of the medical colleges in this state are strictly of

a teaching nature as opposed to direct patient care.”; redesignated former subsections (c) through (e) as present subsections (b) through (d), respectively; in subsection (b), inserted “or her” near the end of the first sentence; in subsection (c), deleted the former last sentence which

read: “Any postgraduate training requirement may be waived for those physicians whose duties are strictly of a teaching nature in one of the medical colleges in this state.”; and deleted former subsection (f).

JUDICIAL DECISIONS

Cited in *Blue Cross of Georgia/Atlanta, Inc. v. Grenwald*, 148 Ga. App. 486, 251 S.E.2d 585 (1978).

43-34-34. Limited provisional licenses.

A person who held a valid provisional license on or before April 16, 1979, shall be able to renew such license annually without any one-time-only renewal limitation, as long as such person continues to meet the other requirements specified in this article and does not otherwise violate this article. (Ga. L. 1974, p. 1156, § 9; Ga. L. 1977, p. 334, § 10; Ga. L. 1979, p. 1023, § 1; Ga. L. 1980, p. 321, § 1; Ga. L. 1982, p. 3, § 43; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, rewrote this Code section.

43-34-35. Issuance of license upon presentation of evidence of required qualifications.

The board shall issue licenses to practice medicine to all persons who shall furnish satisfactory evidence of attainments and qualifications under this article and the rules and regulations of the board. Such license shall give absolute authority to the person to whom it is issued to practice medicine in this state unless restricted as otherwise authorized by law. (Ga. L. 1909, p. 123, § 6; Civil Code 1910, § 1737; Ga. L. 1913, p. 101, § 13; Code 1933, §§ 84-915, 84-1206; Ga. L. 1956, p. 691, § 3; Ga. L. 1966, p. 232, § 3; Ga. L. 1967, p. 826, § 3; Ga. L. 1970, p. 301, § 12; Ga. L. 1974, p. 1156, § 5; Ga. L. 1982, p. 2266, § 4; Ga. L. 1999, p. 296, § 25; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, rewrote this Code section.

Editor's notes. — Ga. L. 1999, p. 296, § 27, not codified by the General Assembly, provides that: “This Act shall become effective on July 1, 1999, except that Sections 12, 13, and 25 of this Act and any other provisions of this Act relating to the transfer of the Composite State Board of

Medical Examiners from the jurisdiction of the Secretary of State shall not become effective upon July 1, 1999, if the Governor by executive order issued before that date determines such transfer to be impracticable on that date, in which event those sections and provisions shall become effective upon the effective date specified in that executive order but no

later than July 1, 2000.” No such executive order was issued.

OPINIONS OF THE ATTORNEY GENERAL

Board cannot confer powers upon private parties. 1973 Op. Att’y Gen. No. 73-127.

43-34-36. Passing upon good standing and reputation of medical and osteopathic colleges.

The board is authorized to pass upon the good standing and reputation of any medical school or osteopathic medical school. Only such medical schools or osteopathic medical schools will be considered in good standing that possess a full and complete faculty for the teaching of medicine, surgery, and obstetrics in all their branches; that afford their students adequate clinical and hospital facilities; that have adequate curricula as determined by the board in its discretion; that fulfill all their published promises, requirements, and other claims respecting advantages to their students and the course of instruction; that exact a preliminary educational requirement equal to that specified by this article; that require students to furnish testimonials of good moral standing; and that give advanced standing only on cards from accredited medical schools or osteopathic medical schools. In determining the reputation of the medical school or osteopathic medical school, the right to investigate and make a personal inspection of the same is authorized. (Ga. L. 1913, p. 101, § 9; Ga. L. 1918, p. 173, § 5; Code 1933, § 84-910; Ga. L. 1970, p. 301, § 9; Code 1981, § 43-34-40; Code 1981, § 43-34-36, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-40 as Code Section 43-34-36; throughout this Code section, substituted “medical school” for “college” and substituted “medical schools” for “colleges”; inserted “school” in the first sentence; and, in the second sentence, inserted “schools” twice, substituted “that possess” for “as possess”, inserted “that” twice, and substituted “article” for “chapter”.

Editor’s notes. — Former Code Section 43-34-36, concerning recording of licenses with the clerk of superior court, was based on Ga. L. 1909, p. 123, § 7; Civil Code 1910, § 1738; Ga. L. 1913, p. 101, § 7; Code 1933, §§ 84-908, 84-1207; Ga. L. 1941, p. 352, § 1; Ga. L. 1956, p. 691, § 8; Ga. L. 1966, p. 346, § 1; Ga. L. 1999, p. 296, § 25, and was repealed by Ga. L. 2009, p. 859, § 1, effective July 1, 2009.

RESEARCH REFERENCES

ALR. — Constitutionality of statute prescribing conditions of practicing medicine or surgery as affected by question of

discrimination against particular school or method, 37 ALR 680; 42 ALR 1342; 54 ALR 600.

43-34-37. Persons authorized to perform artificial insemination; civil liability of physician or surgeon.

(a) Physicians and surgeons licensed to practice medicine in accordance with and under this article shall be the only persons authorized to administer or perform artificial insemination upon any female human being. Any other person or persons who shall attempt to administer or perform or who shall actually administer or perform artificial insemination upon any female human being shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment in the penitentiary for not less than one year nor more than five years.

(b) Any physician or surgeon who obtains written authorization signed by both the husband and the wife authorizing him or her to perform or administer artificial insemination shall be relieved of civil liability to the husband and wife or to any child conceived by artificial insemination for the result or results of said artificial insemination, provided that the written authorization provided for in this Code section shall not relieve any physician or surgeon from any civil liability arising from his or her own negligent administration or performance of artificial insemination. (Code 1933, § 74-101.1, enacted by Ga. L. 1964, p. 166, § 1; Code 1981, § 43-34-42; Code 1981, § 43-34-37, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509; Ga. L. 2010, p. 878, § 43/HB 1387.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-42 as Code Section 43-34-37.

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, inserted “or her” twice in subsection (b).

Cross references. — Legitimacy of children conceived by means of artificial insemination, § 19-7-21. Giving consent

for surgical or medical treatment generally, T. 31, C. 9.

Editor’s notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated former Code Section 43-34-37 as present Code Section 43-34-8.

Law reviews. — For note, “Conceiving Equality: Infertility-Related Illness Under the Pregnancy Discrimination Act,” see 26 Georgia St. U.L. Rev. 1361 (2010).

OPINIONS OF THE ATTORNEY GENERAL

Delegation to physician’s assistants or others. — Administration and performance of artificial insemination upon female human beings may not be delegated

by a licensed physician to a physician’s assistant or other qualified allied health personnel. 1982 Op. Att’y Gen. No. 82-87.

RESEARCH REFERENCES

ALR. — Coverage of artificial insemination procedures or other infertility

treatments by health, sickness, or hospitalization insurance, 80 ALR4th 1059.

43-34-38. Access to medical treatment; experimental and nonconventional medical treatments.

(a) This Code section shall be known and may be cited as the "Access to Medical Treatment Act."

(b) Notwithstanding any other provision of law, and except as provided in subsection (c) of this Code section, an individual shall have the right to be treated for any illness or disease which is potentially life threatening or chronically disabling by a person licensed to practice medicine under this article with any experimental or nonconventional medical treatment that such individual desires or the legal representative of such individual authorizes if such person licensed to practice medicine under this article has personally examined such individual and agrees to treat such individual.

(c) A person licensed to practice medicine under this article may provide any medical treatment to an individual described in subsection (b) of this Code section if:

(1) There is no reasonable basis to conclude that the medical treatment itself, when administered as directed, poses an unreasonable and significant risk of danger to such individual; and

(2) The person licensed to practice medicine under this article has provided the patient with a written statement and an oral explanation, which the patient has acknowledged by the patient's signature or the signature of the patient's legal representative, that discloses the facts regarding the nature of the treatment, specifically including that the treatment offered is experimental or nonconventional, that the drug or medical device has not been approved by the Food and Drug Administration for any indication, as well as the material risks generally recognized by reasonably prudent physicians of such treatment's side effects.

(d) The treatment of patients in compliance with this Code section by a person licensed to practice medicine under this article shall not by itself constitute unprofessional practice or conduct. (Code 1981, § 43-34-42.1, enacted by Ga. L. 1997, p. 1100, § 1; Code 1981, § 43-34-38, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-42.1 as Code Section 43-34-38.

Editor's notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated

former Code Section 43-34-38 as present Code Section 43-34-9.

Law reviews. — For article commenting on the enactment of this Code section, see 14 Georgia St. U.L. Rev. 233 (1997).

43-34-39. Injunctions; violations of article as constituting nuisance.

In addition to any other remedy or criminal prosecution, whenever it shall appear to the board that any person, firm, company, partnership, association, or corporation or the agent, officer, or director of such firm, company, partnership, association, or corporation is or has been violating any of the provisions of this article or any of the laws of the state relating to the practice of medicine, the board may, on its own motion or on the verified complaint in writing of any person, file a complaint in its own name in the superior court having venue and jurisdiction over the parties, alleging the facts and praying for a temporary restraining order and an injunction and permanent injunction against such person, firm, company, partnership, association, or corporation, including any agent, officer, or director of same, restraining him or her from violating such law. Upon proof thereof, the court shall issue such restraining order, injunction, and permanent injunction without requiring allegation or proof that the petitioner therefor has no adequate remedy at law. No restraining order or injunction, whether temporary, permanent, or otherwise, shall be granted without a hearing after at least ten days' notice. It is declared that such violation of this article is a menace and a nuisance dangerous to the public health, safety, and welfare. (Ga. L. 1957, p. 129, § 2; Ga. L. 1970, p. 301, § 14; Code 1981, § 43-34-43; Code 1981, § 43-34-39, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-43 as Code Section 43-34-39; substituted "article" for "chapter" twice; and inserted "or her" near the end of the first sentence.

Editor's notes. — Former Code Section 43-34-39, concerning the duty of the

executive director to transmit copy of revocation order to the clerk of superior court and the cancellation of the record of license, was based on Ga. L. 1913, p. 101, § 14; Ga. L. 1918, p. 173, § 8; Code 1933, § 84-922; Ga. L. 1999, p. 296, § 25, and was repealed by Ga. L. 2009, p. 859, § 1, effective July 1, 2009.

JUDICIAL DECISIONS

Cited in *Reams v. Composite State Bd. of Medical Exmrs.*, 233 Ga. 742, 213 S.E.2d 640 (1975); *Health Horizons, Inc. v.*

State Farm Mut. Auto. Ins. Co., 239 Ga. App. 440, 521 S.E.2d 383 (1999).

RESEARCH REFERENCES

ALR. — Right to enjoin practice of profession or conduct of business without a license or permit, 92 ALR 173.

43-34-40. Fraudulently obtaining or selling records; fraudulent use of terms.

Any person who shall buy, sell, or fraudulently obtain any diploma, license, record, or registration to practice osteopathic medicine, illegally obtained or signed, or issued unlawfully or under fraudulent representation; or who shall use any of the forms or letters, "Osteopathy," "Osteopath," "Osteopathist," "Diplomate in Osteopathy," "D.O.," "D.Sc.O.," "Osteopathic Physician," "Doctor of Osteopathy," or any other title or letters, either alone or with other qualifying words or phrases, under such circumstances as to induce the belief that the person who uses such term or terms is engaged in the practice of osteopathic medicine, or anyone who shall hold himself or herself out as practicing any other nondrug-giving school of medical practice, without having complied with this article, shall be guilty of a felony. (Ga. L. 1909, p. 123, § 11; Penal Code 1910, § 470; Code 1933, § 84-9918; Code 1981, § 43-34-44; Code 1981, § 43-34-40, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-44 as Code Section 43-34-40; substituted "osteopathic medicine," for "osteopathy" twice, inserted "or herself", and substituted "felony" for "misdemeanor" at the end.

Editor's notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated former Code Section 43-34-40 as present Code Section 43-34-36.

JUDICIAL DECISIONS

Cited in *Mabry v. State Bd. of Exmrs. in Optometry*, 190 Ga. 751, 10 S.E.2d 740 (1940); *Georgia Ass'n of Osteopathic Phy-*

sicians & Surgeons, Inc. v. Allen, 31 F. Supp. 206 (M.D. Ga. 1940).

43-34-41. Special licenses for volunteers.

(a) This Code section shall be known and may be cited as the "Georgia Volunteers in Medicine Health Care Act."

(b) Notwithstanding any other provision of law, the board shall issue a special license to qualifying physicians under the terms and conditions set forth in this Code section. The special license shall only be issued to a person who:

(1) Is currently licensed to practice medicine in any medical-licensing jurisdiction in the United States and whose license is unrestricted and in good standing; or

(2) Is retired from the practice of medicine and not currently engaged in such practice either full time or part time and has, prior

to retirement, maintained full licensure in good standing in any medical-licensing jurisdiction in the United States.

As used in this subsection, the term “unrestricted” means that no restrictions have been placed on a physician’s license by the board, no sanctions or disciplinary actions have been imposed by the board on a physician, and a physician is not under probation or suspension by the board.

(c) The special licensee shall be permitted to practice medicine only in the noncompensated employ of persons that provide medical services only to indigent patients in medically underserved or critical need population areas of the state, as determined by the board, or pursuant to Article 8 of Chapter 8 of Title 31.

(d) The person applying for the special license under this Code section shall submit to the board a copy of his or her medical degree, a copy of his or her license in his or her current or previous licensing and regulating jurisdiction, and a notarized statement from the employing agency, institution, corporation, association, or health care program, on a form prescribed by the board, whereby he or she agrees unequivocally not to receive compensation for any medical services he or she may render while in possession of the special license.

(e) The examination by the board, any application fees, and all licensure and renewal fees shall be waived for the holder of the special license under this Code section and do not apply to such person.

(f) If at the time application is made for the special license the physician is not in compliance with the continuing medical education requirements established by the board, such person must document such compliance before a special license is issued.

(g)(1) Except as provided for in paragraph (2) of this subsection, the liability of persons practicing medicine under and in compliance with a special license issued under this Code section and the liability of their employers for such practice shall be governed by Code Section 51-1-29.1.

(2) The liability of persons practicing medicine pursuant to Article 8 of Chapter 8 of Title 31 under and in compliance with a special license issued under this Code section and the liability of their employers shall be governed by the provisions of such article.

(h) Nothing contained in this Code section shall be construed to authorize the holder of the special license provided for in this Code section to perform surgery or any surgical procedure.

(i) This Code section, being in derogation of the common law, shall be strictly construed. (Code 1981, § 43-34-45.1, enacted by Ga. L. 1999, p.

266, § 1.1; Ga. L. 2002, p. 639, § 1; Ga. L. 2005, p. 1463, § 4/HB 166; Ga. L. 2008, p. 354, § 5/HB 1222; Code 1981, § 43-34-41, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-45.1 as Code Section 43-34-41; in subsection (c), substituted “persons that” for “public agencies or institutions or not for profit agencies, not for profit institutions, nonprofit corporations, or not for profit associations which” in the middle; in subsection (e), substituted “shall” for “must”; and, in subsection (f), substituted “such person must document such compliance before a special license is issued” for “the physician shall be issued a nonrenewable temporary license to practice for six months provided the applicant is otherwise qualified for such license” at the end.

Cross references. — “Health Share” volunteers in medicine, T. 31, C. 8, A. 8.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, “critical need” was substituted for “critical-need” in subsection (c).

Editor’s notes. — Ga. L. 1999, p. 266, § 2.1 provides for the automatic repeal of this Code section effective July 1, 2002, upon which date any special license issued pursuant to this Code section shall also expire.

Ga. L. 2002, p. 639, § 1(b)(3), not codi-

fied by the General Assembly, provides: “Section 2.1 of an Act amending Chapter 1 of Title 31 of the Official Code of Georgia Annotated, relating to general provisions regarding health, approved April 13, 1999 (Ga. L. 1999, p. 266), which would have provided for a future repeal or ‘sunset’ of Code Section 43-34-45.1 of the Official Code of Georgia Annotated, the ‘Georgia Volunteers in Medicine Health Care Act,’ is hereby repealed.”

Ga. L. 2002, p. 639, § 1(c)(3), not codified by the General Assembly, provides: “The provisions of Code Section 43-34-45.1 of the Official Code of Georgia Annotated, the ‘Georgia Volunteers in Medicine Health Care Act,’ which were in effect and applicable on January 1, 2002, shall remain in effect and applicable until and unless changed by future Act of the General Assembly.”

Former Code Section 43-34-41, concerning preliminary educational requirements for medical or osteopathic school or college, was based on Ga. L. 1913, p. 101, § 9; Ga. L. 1918, p. 173, § 5; Code 1933, § 84-911; Ga. L. 1970, p. 301, § 10, and was repealed by Ga. L. 2009, p. 859, § 1, effective July 1, 2009.

43-34-42. Penalty.

(a) Any person who practices medicine without complying with this article or who otherwise violates any provision of this article shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of \$1,000.00 per each violation or by imprisonment from two to five years, or both.

(b) Any person presenting or attempting to file as his or her own the diploma or certificate or credentials of another or who shall give false or forged evidence of any kind to the board or any member thereof in connection with an application for a license to practice medicine or who shall practice medicine under a false or assumed name or who shall falsely impersonate any other practitioner of a like or different name shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of \$5,000.00 or by imprisonment from two to five years, or both. (Ga. L. 1913, p. 101, § 15; Code 1933, § 84-9914; Ga. L.

1976, p. 687, § 2; Code 1981, § 43-34-46; Code 1981, § 43-34-42, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-46 as Code Section 43-34-42; in subsection (a), substituted “\$1,000.00 per each violation” for “not less than \$500.00 nor more than \$1,000.00” at the end; in subsection (b), inserted “or her”, deleted

three commas, and substituted “\$5,000.00” for “not less than \$500.00 nor more than \$1,000.00” near the end.

Editor’s notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated former Code Section 43-34-42 as present Code Section 43-34-37.

JUDICIAL DECISIONS

Mere failure to have license to practice does not authorize inference of negligence when one attempts to treat or operate on another and injures that person. *Andrews v. Lofton*, 80 Ga. App. 723, 57 S.E.2d 338 (1950).

Plaintiff must establish causal relation between lack of license and injury sustained. — Allegations that duties and inhibitions imposed upon the defendant by statutes as to necessity of having a license to practice medicine or surgery were due to plaintiff and child personally, and as members of public seeking medical and surgical care, and that death of the child was a natural and probable consequence of violation of such statutes by the defendant were subject to demurrer (now motion to dismiss) for failure to show anything having a causal relation to death of child. *Andrews v. Lofton*, 80 Ga. App. 723, 57 S.E.2d 338 (1950).

Defendant’s holding self out as physician is relevant in establishing why plaintiff engaged defendant’s services. — Allegations made that the defendant falsely held self out as a physician

and surgeon, and that physician/surgeon did not possess qualifications necessary for possession of a license are pertinent by way of history or inducement as to why plaintiff engaged services of the defendant and for that reason should not be stricken on demurrer (now motion to dismiss), though irrelevant on question of defendant’s negligence. *Andrews v. Lofton*, 80 Ga. App. 723, 57 S.E.2d 338 (1950).

License to practice medicine. — Second doctor was not licensed to practice medicine as the second doctor had voluntarily suspended that doctor’s license by allowing the license to expire because the doctor had begun to suffer from dementia; thus, the doctor’s statement to police that the nurse had attempted to fill prescriptions written by the second doctor after the second doctor had surrendered that doctor’s medical license was true. As a result, the nurse did not have a viable claim for slander against the doctor. *Gunnells v. Marshburn*, 259 Ga. App. 657, 578 S.E.2d 273 (2003).

Cited in *Morton v. Gardner*, 242 Ga. 852, 252 S.E.2d 413 (1979); *Foster v. Georgia Bd. of Chiropractic Exmrs.*, 257 Ga. 409, 359 S.E.2d 877 (1987).

RESEARCH REFERENCES

ALR. — Hypnotism as illegal practice of medicine, 85 ALR2d 1128.

Practicing medicine, surgery, dentistry,

optometry, podiatry, or other healing arts without a license as a separate or continuing offense, 99 ALR2d 654.

43-34-42.1. Redesignated.

Editor’s notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated

former Code Section 43-34-42.1 as present Code Section 43-34-38.

43-34-43. Temporary postgraduate training permits; refusal to issue a permit; discipline of permit holders; notifications to board; authorization to adopt regulations.

(a) As used in this Code section, the term:

(1) "Program director" means a physician licensed in this state who is responsible for screening, selecting, and supervising physicians enrolled in one or more of an institution's postgraduate training programs.

(2) "Temporary postgraduate training permit" means a permit issued by the board to a graduate of a board approved medical school or osteopathic medical school who is enrolled in a postgraduate training program deemed acceptable by the board and who does not currently hold a full and unrestricted license in this state.

(3) "Training institution" means an institution that sponsors and conducts a postgraduate training program approved by the Accreditation Council for Graduate Medical Education (ACGME), the American Osteopathic Association (AOA), or other program approved by the board for the training of interns, residents, or postresidency fellows including Canadian schools.

(b)(1) An individual seeking to pursue postgraduate medical training in this state who does not hold a license to practice medicine issued under this article shall apply to the board for a temporary postgraduate training permit. The application shall be made on forms that the board shall furnish and shall be accompanied by the application and permit fees set by the board. Such application shall include the following:

(A) Evidence satisfactory to the board that the applicant has been accepted or appointed to participate at a training institution in this state in one of the following:

(i) An internship or residency program accredited by either the Accreditation Council for Graduate Medical Education or the American Osteopathic Association; or

(ii) A clinical fellowship program at an institution with a residency program accredited either by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association that is in a clinical field the same as or related to the clinical field of the fellowship program;

(B) Information satisfactory to the board that identifies the beginning and ending dates of the period for which the applicant has been accepted or appointed to participate in the internship, residency, or clinical fellowship program; and

(C) Any other information that the board requires.

Nothing in this Code section shall prohibit an individual from obtaining a full and unrestricted license to practice medicine under this article.

(2) If the applicant meets the requirements of paragraph (1) of this subsection, the board shall issue a temporary postgraduate training permit to the applicant. A temporary postgraduate training permit issued pursuant to this subsection shall be valid only for a period of one year but may, in the discretion of the board and upon application duly made and payment of the renewal fee required by the board, be renewed annually for the duration of the postgraduate training program for a period not to exceed seven years. The board shall maintain a registry of all individuals who hold temporary postgraduate training permits.

(3) The holder of a valid temporary postgraduate training permit shall be entitled to perform such acts as may be prescribed by or incidental to the holder's postgraduate residency training program, but the holder shall not be entitled otherwise to engage in the practice of medicine in this state. The holder shall train only under the supervision of the physicians responsible for supervision as part of the postgraduate training program. The temporary postgraduate training permit shall authorize the person receiving the permit to practice in facilities affiliated with the postgraduate training program only if such practice is part of the training program.

(4) Prior to participating in a postgraduate medical training program in this state, individuals must either hold a license to practice medicine or a temporary postgraduate training permit issued by the board or have applied for a temporary postgraduate training permit. The board shall issue temporary postgraduate training permits to applicants meeting the board's qualifications within 30 days of receipt by the board of the application.

(5) A temporary postgraduate training permit issued pursuant to this Code section shall expire upon the permit holder's withdrawal or termination from, or completion of, the postgraduate training program or upon obtaining a license to practice medicine under this article.

(6) The board shall have the authority to discipline the holder of a temporary postgraduate training permit in the same manner and based upon any ground or violation enumerated in Code Section 43-34-8.

(7) By obtaining a temporary postgraduate training permit, the permit holder consents to the release of information pursuant to

subsection (d) of this Code section from program directors and supervising physicians and authorizes the chairperson of the board to be an agent for service.

(c)(1) The board shall have the authority to refuse to issue or renew or to suspend, revoke, or limit a temporary postgraduate training permit based upon any of the grounds or violations enumerated in Code Section 43-34-8.

(2) The refusal, suspension, revocation, or limitation of a temporary postgraduate training permit shall not be deemed to be a contested case under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and notice and a hearing within the meaning of such chapter shall not be required. The individual or permit holder shall be allowed to appear before the board if he or she so requests regarding such refusal, suspension, revocation, or limitation.

(d)(1) It is the responsibility of the program director for the training program to notify the board upon the permit holder's withdrawal or termination from, or completion of, the postgraduate training program.

(2) Program directors shall comply with all other reporting requirements which the board by rule and regulation may require.

(3) Failure to comply with the board's reporting requirements shall be grounds for disciplinary action by the board.

(e) The board may adopt such rules and regulations as necessary to effect the purpose of this Code section. (Code 1981, § 43-34-47, enacted by Ga. L. 2004, p. 379, § 2; Code 1981, § 43-34-43, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-47 as Code Section 43-34-43; in paragraph (a)(2), inserted "school" and inserted "medical"; in paragraph (a)(3), inserted "(ACGME)", inserted "(AOA)", and added "including Canadian schools" at the end; in paragraph (b)(1), substituted "article" for "chapter" in the middle of the first sentence; in paragraphs (b)(6) and

(c)(1), substituted "Code Section 43-34-8" for "Code Sections 43-1-19 and 43-34-37" at the end; and, in paragraph (b)(7), substituted "chairperson" for "president" near the end.

Editor's notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated former Code Section 43-34-43 as present Code Section 43-34-39.

43-34-44. Role of medical assistants clarified.

Nothing in this article shall be construed to prohibit the performance by medical assistants of medical tasks, including subcutaneous and intramuscular injections; obtaining vital signs; administering nebulizer treatments; or other tasks approved by the board pursuant to rule, if under the supervision by a physician in his or her office; provided,

however, that this shall not require on-site supervision at all times, or the performance by medical assistants of medical tasks ordered by a physician assistant or advanced practice registered nurse delegated the authority to issue such an order in accordance with law and pursuant to rules of the board. (Code 1981, § 43-34-44, enacted by Ga. L. 2009, p. 859, § 1/HB 509.)

Effective date. — This Code section § 1, effective July 1, 2009, redesignated became effective July 1, 2009. former Code Section 43-34-44 as present

Editor's notes. — Ga. L. 2009, p. 859, Code Section 43-34-40.

43-34-45. Polysomnography; practice.

(a) As used in this Code section, the term:

(1) “Polysomnography” means the treatment, management, diagnostic testing, control, education, and care of patients with sleep and wake disorders. Polysomnography includes, but is not limited to, the process of analysis, monitoring, and recording of physiologic data during sleep and wakefulness to assist in the treatment of disorders, syndromes, and dysfunctions that are sleep related, manifest during sleep, or disrupt normal sleep activities. Polysomnography also includes, but is not limited to, the therapeutic and diagnostic use of low-flow oxygen, the use of positive airway pressure including continuous positive airway pressure (CPAP) and bi-level modalities, adaptive servo-ventilation, and maintenance of nasal and oral airways that do not extend into the trachea.

(2) “Polysomnographic technologist” means any person performing polysomnography services under the supervision of a person licensed under this article.

(3) “Supervision” means that the supervising physician licensed under this article shall remain available, either in person or through telephonic or electronic means, at the time that polysomnography services are provided.

(b) A physician may delegate tasks involving polysomnography to a polysomnographic technologist without regard to whether such technologist is certified or licensed as a respiratory care therapist under Article 6 of this chapter.

(c) Nothing in this Code section shall be construed to:

(1) Permit the practice of medicine as defined in this article by polysomnographic technologists;

(2) Prohibit a health care provider licensed in this state from engaging in the practice for which he or she is licensed, including, but not limited to, respiratory care professionals certified under Article 6 of this chapter; or

(3) Authorize a polysomnographic technologist to treat, manage, control, educate, or care for patients other than those with sleep or wake disorders or to provide diagnostic testing for patients other than those with suspected sleep or wake disorders. (Code 1981, § 43-34-45, enacted by Ga. L. 2009, p. 859, § 1/HB 509.)

Effective date. — This Code section became effective July 1, 2009.

Editor's notes. — Former Code Section 43-34-45, concerning practicing osteopathy by fraud or misrepresentation,

was based on Ga. L. 1909, p. 123, § 11; Penal Code 1910, § 470; Code 1933, § 84-9919 and was repealed by Ga. L. 2009, p. 859, § 1, effective July 1, 2009.

43-34-45.1. Redesignated.

Editor's notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated

former Code Section 43-34-45.1 as present Code Section 43-34-41.

43-34-46. Redesignated.

Editor's notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated

former Code Section 43-34-46 as present Code Section 43-34-42.

43-34-47. Redesignated.

Editor's notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated

former Code Section 43-34-47 as present Code Section 43-34-43.

ARTICLE 3

ACUPUNCTURE

Editor's notes. — Ga. L. 1982, p. 2266, § 6, repealed former Article 3, the "Orthotists Practice Act", effective November 1, 1982, which consisted of Code

Sections 43-34-60 through 43-34-83. These Code sections were based on Ga. L. 1976, p. 1349, §§ 1-5, 7-9, 11, 12, 14-28; Ga. L. 1982, p. 3, § 43.

RESEARCH REFERENCES

Am. Jur. 2d. — 43 Am. Jur. 2d, Insurance, § 563.

61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §§ 3, 35.

43-34-60. Short title.

This article shall be known and may be cited as the "Acupuncture Act of Georgia." (Code 1981, § 43-34-60, enacted by Ga. L. 2000, p. 538, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, Code Section 43-34-60, as enacted by Ga. L.

2002, p. 1273, § 1, was redesignated as Code Section 43-34-190.

Editor's notes. — Ga. L. 2009, p. 859,

§ 1, effective July 1, 2009, reenacted this Code section without change.

43-34-61. Purpose.

The General Assembly finds and declares that the practice of acupuncture in Georgia affects the public health, safety, and welfare and that it is necessarily a proper subject of regulation and control. (Code 1981, § 43-34-61, enacted by Ga. L. 2000, p. 538, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, Code Section 43-34-61, as enacted by Ga. L. 2002, p. 1273, § 1, was redesignated as Code Section 43-34-191.

Editor’s notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, reenacted this Code section without change.

43-34-62. Definitions.

As used in this article, the term:

- (1) “Acupuncture” means a form of therapy developed from traditional and modern Oriental concepts for health care that employs Oriental medical techniques, treatment, and adjunctive therapies for the promotion, maintenance, and restoration of health and the prevention of disease.
- (2) “Auricular (ear) detoxification therapy” means the insertion of disposable acupuncture needles into the five auricular acupuncture points stipulated by the National Acupuncture Detoxification Association protocol for the sole purpose of treatment of chemical dependency.
- (3) “Board” means the Georgia Composite Medical Board.
- (4) “Practice of acupuncture” means the insertion of disposable acupuncture needles and the application of moxibustion to specific areas of the human body based upon Oriental medical principles as a therapeutic modality. Dry needling is a technique of the practice of acupuncture. Adjunctive therapies within the scope of acupuncture may include manual, mechanical, herbal, thermal, electrical, and electromagnetic treatment and the recommendation of dietary guidelines and exercise, but only if such treatments, recommendations, and exercises are based on concepts of traditional Oriental medicine and are directly related to acupuncture therapy. (Code 1981, § 43-34-62, enacted by Ga. L. 2000, p. 538, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, substituted the present provisions of paragraph (3) for the former provisions, which read: “‘Board’ means the

Composite State Board of Medical Examiners created by Code Section 43-34-21.”; and added the second sentence in paragraph (4).

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 2002, Code Section 43-34-62, as enacted by Ga. L. 2002, p. 1273, § 1, was redesignated as Code Section 43-34-192.

43-34-63. Power and responsibility of the board.

The board, in consultation with the advisory committee, shall have the power and responsibility to:

(1) Determine the qualifications and fitness of applicants for licensure and renewal of licensure;

(2) Adopt and revise rules consistent with the laws of this state that are necessary to conduct its business, carry out its duties, and administer this article;

(3) Examine for, approve, issue, deny, revoke, suspend, and renew the licenses of acupuncture applicants and licensed acupuncturists under this article and conduct hearings in connection with these actions;

(4) Conduct hearings on complaints concerning violations of this article and the rules adopted under this article and cause the prosecution and enjoinder of the violations;

(5) Establish application, examination, and licensure fees;

(6) Request and receive the assistance of state educational institutions or other state agencies and prepare information of consumer interest describing the regulatory functions of the board and the procedures by which consumer complaints are filed with and resolved by the board. The board shall make the information available to the public and appropriate state agencies; and

(7) Establish continuing education requirements. (Code 1981, § 43-34-63, enacted by Ga. L. 2000, p. 538, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, Code Section 43-34-63, as enacted by Ga. L. 2002, p. 1273, § 1, was redesignated as Code Section 43-34-193.

Editor’s notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, reenacted this Code section without change.

43-34-64. Licensure requirements.

(a) Each applicant for a license to practice acupuncture shall meet the following requirements:

(1) Be at least 21 years of age;

- (2) Submit a completed application required by the board;
 - (3) Submit any fees required by the board;
 - (4) Be certified in acupuncture by a national certification agency accredited by the National Organization of Competency Assurance and approved by the board;
 - (5) Have successfully completed a nationally recognized clean needle technique course approved by the board;
 - (6) Have obtained professional liability insurance in the amount of at least \$100,000.00/\$300,000.00;
 - (7) Have passed an acupuncture examination offered by an organization accredited by the National Organization of Competency Assurance and approved by the board; and
 - (8) Have successfully completed a degree in acupuncture or a formal course of study and training in acupuncture. The applicant shall submit documentation satisfactory to the board to show that such education or course of study and training was:
 - (A) Completed at a school that is accredited by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) or other accrediting entity approved by the board: or
 - (B) Completed by means of a program of acupuncture study and training that is substantially equivalent to the acupuncture education offered by an accredited school of acupuncture approved by the board.
- (b) Reserved.
- (c) Before any person licensed to practice acupuncture under this article, who has less than one year of postgraduate clinical experience, may practice on his or her own, such person must engage in one year of active practice under the supervision of a licensed acupuncturist with a minimum of four years active licensed clinical practice. Such supervising acupuncturist may be licensed in Georgia or any other state or country with licensing requirements substantially equal to Georgia's licensing requirements and may accumulate the required four years of active licensed clinical practice in any combination of states so long as the licensing requirements of such other states or countries are substantially equal to Georgia's licensing requirements.
- (d) Each applicant for a license to perform auricular (ear) detoxification therapy as an auricular (ear) detoxification technician shall meet the following requirements:

- (1) Be at least 21 years of age;

(2) Submit a completed application required by the board;

(3) Submit any fees required by the board;

(4) Have successfully completed a nationally recognized training program in auricular (ear) detoxification therapy for the treatment of chemical dependency as approved by the board; and

(5) Have successfully completed a nationally recognized clean needle technique course approved by the board.

(e) The practice of auricular (ear) detoxification therapy may take place in a city, county, state, federal, or private chemical dependency program approved by the board under the direct supervision of a licensed acupuncturist or a person authorized to practice acupuncture by the board who is also authorized to practice medicine under Article 2 of this chapter. (Code 1981, § 43-34-64, enacted by Ga. L. 2000, p. 538, § 1; Ga. L. 2001, p. 791, § 1; Ga. L. 2006, p. 72, § 43/SB 465; Ga. L. 2007, p. 47, § 43/SB 103; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, in subsection (a), deleted “and” at the end of paragraph (a)(5), substituted a semicolon for a period at the end of paragraph (a)(6), and added paragraphs (a)(7) and (a)(8); and, in subsection (d), inserted “as an auricular (ear) detoxification technician” near the middle of the introductory paragraph.

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 2002, Code Section 43-34-64, as enacted by Ga. L. 2002, p. 1273, § 1, was redesignated as Code Section 43-34-194.

Editor’s notes. — Ga. L. 2000, p. 538, § 1 provided for the repeal of subsection (b), effective July 15, 2001. Ga. L. 2001, p. 791, § 1, extended the date of repeal of subsection (b) to July 15, 2002.

43-34-65. Applicant notification procedures.

After evaluation of an application and other evidence submitted by an applicant, the board shall notify such applicant that the application and evidence submitted are satisfactory and accepted or unsatisfactory and rejected. If an application is rejected, the notice shall state the reasons for rejection. (Code 1981, § 43-34-65, enacted by Ga. L. 2000, p. 538, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, Code Section 43-34-65, as enacted by Ga. L. 2002, p. 1273, § 1, was redesignated as Code Section 43-34-195.

Editor’s notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, reenacted this Code section without change.

43-34-66. License surrender upon demand; display requirements; change of address.

(a) Any document evidencing licensure issued by the board is the property of the board and must be surrendered on demand.

(b) Every person who holds a license issued by the board in accordance with this article and who is engaged in the active practice of acupuncture or the active practice of auricular (ear) detoxification therapy as an auricular (ear) detoxification technician shall display the document evidencing licensure in an appropriate and public manner.

(c) Every person who holds a license issued by the board shall inform the board of any change of address. (Code 1981, § 43-34-66, enacted by Ga. L. 2000, p. 538, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, inserted “or the active practice of auricular (ear) detoxification therapy as an auricular (ear) detoxification technician” in the middle of subsection (b).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, Code Section 43-34-66, as enacted by Ga. L. 2002, p. 1273, § 1, was redesignated as Code Section 43-34-196.

43-34-67. License renewal requirements; inactive status.

(a) A license issued under this article shall be renewed biennially if the person holding such license is not in violation of this article at the time of application for renewal and if the application fulfills current requirements of continuing education as established by the board.

(b) Each person licensed under this article is responsible for renewing his or her license before the expiration date.

(c) Under procedures and conditions established by the board, a license holder may request that his or her license be declared inactive. The licensee may apply for active status at any time and, upon meeting the conditions set by the board, shall be declared active. (Code 1981, § 43-34-67, enacted by Ga. L. 2000, p. 538, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, Code Section 43-34-67, as enacted by Ga. L. 2002, p. 1273, § 1, was redesignated as Code Section 43-34-197.

Editor’s notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, reenacted this Code section without change.

43-34-68. Informed consent requirements.

(a) Any person who undergoes acupuncture must consent to such procedure and shall be informed in general terms of the following:

(1) That the practice of acupuncture is based upon the Oriental arts and is completely distinct and different from traditional western medicine;

(2) That the acupuncturist cannot practice medicine, is not making a medical diagnosis of the person’s disease or condition, and that such

person should see a physician if he or she wants to obtain a medical diagnosis; and

(3) The nature and the purpose of the acupuncture treatment.

(b) The board shall develop a standard informed consent form to be used by persons licensed under this article. Such informed consent form shall include the information set forth in subsection (a) of this Code section as well as any other and additional information the board deems appropriate. The information set forth in the informed consent form shall be in language which is easy to read and readily understandable to the consuming public. (Code 1981, § 43-34-68, enacted by Ga. L. 2000, p. 538, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, Code Section 43-34-68, as enacted by Ga. L. 2002, p. 1273, § 1, was redesignated as Code Section 43-34-198.

Editor's notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, reenacted this Code section without change.

43-34-69. Sanctions.

The board, in consultation with the advisory committee, may impose any sanction authorized under subsection (b) of Code Section 43-34-8 upon a finding of any conduct specified in subsection (a) of Code Section 43-34-8 or a finding that such conduct involved dividing or agreeing to divide a fee for acupuncture services with any person who refers a patient, notwithstanding that such board is not a professional licensing board. (Code 1981, § 43-34-69, enacted by Ga. L. 2000, p. 538, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, substituted "subsection (b)" for "subsection (d)" and substituted "Code Section 43-34-8" for "Code Section 43-1-19" twice in this Code section.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, "profes-

sional licensing board" was substituted for "state examining board" at the end.

Pursuant to Code Section 28-9-5, in 2002, Code Section 43-34-69, as enacted by Ga. L. 2002, p. 1273, § 1, was redesignated as Code Section 43-34-199.

43-34-70. Advisory committee.

The board shall appoint an acupuncture advisory committee. The advisory committee shall include members of the acupuncture profession licensed to practice acupuncture under this article, persons licensed to practice medicine under Article 2 of this chapter who are acupuncturists, and such members as the board in its discretion may determine. Members shall receive no compensation for service on the committee. The committee shall have such advisory duties and responsibilities as the board may determine. Acupuncture advisory committee members must be licensed pursuant to this article. (Code 1981,

§ 43-34-70, enacted by Ga. L. 2000, p. 538, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, substituted “include” for “be representative of a cross section of the cultural backgrounds of the” in the middle of the second sentence, deleted the former fifth sentence which read: “The charter acupuncture advisory committee may include persons eligible for licensing under

this article.”, and substituted “Acupuncture” for “Subsequent acupuncture” at the beginning of the last sentence.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, Code Section 43-34-70, as enacted by Ga. L. 2002, p. 1273, § 1, was redesignated as Code Section 43-34-200.

43-34-71. Unlicensed practice; exceptions; penalties.

(a) Unless licensed under this article or exempted under subsection (b) of this Code section, no person shall:

(1) Practice acupuncture or auricular (ear) detoxification therapy; or

(2) Represent himself or herself to be an acupuncturist or auricular (ear) detoxification technician who is licensed under this article.

(b) The prohibition in subsection (a) of this Code section does not apply to:

(1) Any person licensed to practice medicine under Article 2 of this chapter;

(2) The practice of acupuncture which is an integral part of the program of study by students enrolled in an acupuncture education program under the direct clinical supervision of a licensed acupuncturist with at least five years of clinical experience; or

(3) The practice of acupuncture by any person licensed or certified to perform acupuncture in any other jurisdiction that has requirements equivalent to or more stringent than this article where such person is doing so in the course of regular instruction in an approved educational program of acupuncture or in an educational seminar of an approved professional organization of acupuncture, provided that in the latter case the practice is supervised directly by a person licensed to practice acupuncture pursuant to this article or an acupuncturist who is licensed to practice medicine under Article 2 of this chapter.

(c) Any person violating subsection (a) of this Code section shall, upon conviction thereof, be guilty of a misdemeanor. (Code 1981, § 43-34-71, enacted by Ga. L. 2000, p. 538, § 1; Ga. L. 2002, p. 415, § 43; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, substituted “technician” for “specialist” near the end of paragraph (a)(2); and inserted “that has requirements equivalent to or more stringent than this article” in the middle of paragraph (b)(3).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, Code Section 43-34-71, as enacted by Ga. L. 2002, p. 1273, § 1, was redesignated as Code Section 43-34-201.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders not required. — Violation of O.C.G.A. § 43-34-71(a) is not an offense designated

as one that requires fingerprinting. 2000 Op. Att’y Gen. No. 2000-11.

43-34-72. Use of titles and professional designations.

(a) The titles “Licensed Acupuncturist” (L. Ac.) and “Acupuncturist” may only be used by persons licensed under this article.

(b) The title “Auricular Detoxification Technician” (A.D.T.) may only be used by persons licensed to practice auricular (ear) detoxification therapy under this article. Possession of a license to practice as an A.D.T. does not by itself entitle a person to identify himself or herself as an acupuncturist. An auricular (ear) detoxification technician is strictly limited to five ear points’ treatment for detoxification for substance abuse, chemical dependency, or both.

(c) No person licensed under this article may advertise or hold himself or herself out to the public as being authorized to practice medicine under Article 2 of this chapter. (Code 1981, § 43-34-72, enacted by Ga. L. 2000, p. 538, § 1; Ga. L. 2005, p. 60, § 43/HB 95; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, in subsection (b), substituted “Technician” (A.D.T.) for “Specialist” (A.D.S.) near the beginning of the first sentence, substituted “to practice as an A.D.T.” for “as an A.D.S.” in the second sentence, and substituted “technician” for “specialist” in the last sentence.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, Code Section 43-34-72, as enacted by Ga. L. 2002, p. 1273, § 1, was redesignated as Code Section 43-34-202.

43-34-73 and 43-34-74. Redesignated.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, Code Sections 43-34-73 and 43-34-74 as enacted

by Ga. L. 2002, p. 1273, § 1, were redesignated as Code Sections 43-34-203 and 43-34-204.

ARTICLE 4
PHYSICIAN ASSISTANTS

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 39 Am. Jur. 2d, Health, §§ 1 et seq., 26 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614,

615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 39A C.J.S., Health and Environment, §§ 3 et seq., 37 et seq., 48 et seq. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

43-34-100. Short title.

This article shall be known and may be cited as the “Physician Assistant Act.” (Ga. L. 1972, p. 676, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, substituted “Physician” for “Physician’s” near the end of this Code section.

JUDICIAL DECISIONS

Cited in Cardio TVP Surgical Assocs. v. Gillis, 272 Ga. 404, 528 S.E.2d 785 (2000).

RESEARCH REFERENCES

C.J.S. — 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers, § 1 et seq.

43-34-101. Legislative purpose.

(a) To alleviate the growing shortage and geographic maldistribution of health care services in this state, the General Assembly intends, by this article, to recognize physician assistants and their role in addressing this growing health care shortage.

(b) This article is intended to encourage the more effective utilization of the skills of physicians by enabling them to delegate health care tasks to such assistants where such delegation is consistent with the

patient's health and welfare. (Ga. L. 1972, p. 676, § 2; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, substituted "recognize physician assistants and their role in addressing this growing health care shortage" for "establish a new category of health care, namely, assistants to physicians, which category includes new types of health care personnel, as well as those persons licensed in presently established categories

of health care" at the end of subsection (a); and deleted the former last sentence of subsection (b) which read: "Toward this end, the General Assembly intends to remove legal constraints which presently constitute unnecessary hindrances to the more effective delivery of health care services."

JUDICIAL DECISIONS

Cited in Cardio TVP Surgical Assocs. v. Gillis, 272 Ga. 404, 528 S.E.2d 785 (2000).

43-34-102. Definitions.

As used in this article, the term:

(1) "Applicant" means an individual seeking licensure as a physician assistant pursuant to this article.

(2) "Alternate supervising physician" means a physician to whom a board approved primary supervising physician has delegated the responsibility of supervising a physician assistant who is licensed to that primary supervising physician and who agrees to supervise the physician assistant for the primary supervising physician and who is on record with the board.

(3) "Board" means the Georgia Composite Medical Board.

(4) "Job description" means a document, signed by the primary supervising physician and the physician assistant, in which the primary supervising physician delegates to that physician assistant authority to perform certain medical acts and which describes the professional background and specialty of the primary supervising physician and the qualifications including related experience of the physician assistant; and includes a general description of how the physician assistant will be utilized in the practice. A job description shall not be required to contain every activity the physician deems the physician assistant qualified to perform but shall confine the activities of the physician assistant to those in the scope of practice of the primary supervising physician.

(5) "Order" means to prescribe pursuant to a job description which drug, medical device, medical treatment, or diagnostic study is appropriate for a patient and to communicate the same in writing, orally, via facsimile, or electronically.

(6) “Physician” means a person lawfully licensed in this state to practice medicine and surgery pursuant to Article 2 of this chapter.

(7) “Physician assistant” means a skilled person who is licensed to a supervising physician and who is qualified by academic and practical training to provide patients’ services not necessarily within the physical presence but under the personal direction or supervision of the supervising physician.

(8) “Prescription drug order” means a written or oral order of a physician assistant for a drug or medical device for a specific patient. Such term includes an electronic visual image prescription drug order and an electronic data prescription drug order.

(9) “Primary supervising physician” means the physician to whom the board licenses a physician assistant pursuant to a board approved job description and who has the primary responsibility for supervising the practice of a physician assistant pursuant to that physician assistant’s job description. (Ga. L. 1972, p. 676, § 3; Ga. L. 1995, p. 827, § 1; Ga. L. 2002, p. 1043, § 1; Ga. L. 2004, p. 581, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, rewrote this Code section. amendments of this Code section and § 43-34-103, see 12 Georgia St. U.L. Rev. 301 (1995).
Law reviews. — For note on 1995

JUDICIAL DECISIONS

Cited in Central Anesthesia Assocs. v. (1985); Cardio TVP Surgical Assocs. v. Worthy, 254 Ga. 728, 333 S.E.2d 829 Gillis, 272 Ga. 404, 528 S.E.2d 785 (2000).

43-34-103. Application for assistant; number of assistants; job descriptions; duties; receipt of samples; employment by nonpracticing physicians; delegated authority; temporary practice agreements; assistance during emergencies; pronouncement of death.

(a)(1) In order to obtain licensure as a physician assistant, an applicant shall submit an application to the board. Such application shall include:

(A) Evidence submitted by the applicant of his or her good moral character; and

(B) Evidence of his or her competency in a health care area related to the job description which, as a minimum, shall include:

(i) Evidence of satisfactory completion of a training program approved by the board. If the applicant is not a graduate of an accredited school approved by the board, he or she shall be

required to receive board approved refresher training and testing; and

(ii) Evidence that the applicant has passed the Physician Assistant National Certification Examination (PANCE) administered by the National Commission for the Certification of Physician Assistants (NCCPA), or its successor, or the National Association for the Certification of Anesthesia Assistants, (NACAA) or its successor.

The board may issue a temporary permit to any applicant for licensure who has satisfied the provisions of division (i) of this subparagraph and who is an applicant for the next available board approved or administered examination or who has completed this examination and is awaiting the results of such examination. The temporary permit shall expire upon notification of the applicant's failure to achieve a satisfactory score on the board approved or administered examination. A physician assistant licensed pursuant to this paragraph shall not be authorized to perform any medical acts of any sort except as approved for utilization by a physician in a job description pursuant to paragraph (2) of this subsection. The board may grant an inactive licensure status to a physician assistant who is licensed pursuant to this article but who is not practicing with the supervision of a board approved primary supervising physician.

(2) In order to obtain approval for the utilization of a physician assistant, whether the utilization is in a private practice or through a public or private health care institution or organization, the licensed physician who will be responsible for the performance of such physician assistant shall submit an application to the board which shall include:

(A) Evidence that the physician assistant is licensed pursuant to paragraph (1) of this subsection;

(B) A job description meeting the requirements of paragraph (4) of Code Section 43-34-102; and

(C) A fee, established by the board; provided, however, that no fee will be required if the physician assistant is an employee of the state or a county government.

(b)(1) No primary supervising physician shall have more than four physician assistants licensed to him or her at a time; provided, however, that no physician may supervise more than two physician assistants at any one time except as provided in paragraph (2) of this subsection.

(2)(A) A physician may supervise as many as four physician assistants at any one time while practicing in a group practice in

which other physician members of such group practice are primary supervising physicians.

(B) A physician may supervise as many as four physician assistants at any one time while acting as an alternate supervising physician:

- (i) In an institutional setting such as a hospital or clinic;
- (ii) On call for a primary supervising physician or a group practice; or
- (iii) If otherwise approved by the board to act as an alternate supervising physician.

(3) A primary supervising physician shall designate in writing to the board such other physicians who may serve as an alternate supervising physician for each physician assistant licensed to such primary supervising physician. The board shall have authority to approve or deny such designations in whole or in part; provided, however, a physician may be listed as an alternate supervising physician for any number of physician assistants so long as he or she only supervises as many physician assistants at any one time as allowed by paragraph (2) of this subsection.

(c)(1) At all times while providing patient services, a physician assistant shall have a signed job description submitted by his or her primary supervising physician and approved by the board.

(2) Nothing in this article shall prevent a primary supervising physician from submitting to the board a new or amended physician assistant job description.

(d) A physician assistant is authorized to practice in those public or private places or facilities where the supervising physician or alternate supervising physician regularly sees patients, provided that nothing in this article shall prohibit the rendering of services to a patient by a physician assistant who is not in the physical presence of the supervising physician or preclude a physician assistant from making house calls, performing hospital duties, serving as an ambulance attendant, or performing any functions authorized by the supervising physician which the physician assistant is qualified to perform.

(e) A physician assistant may not be utilized to perform the duties of a pharmacist licensed under Chapter 4 of Title 26, relating to pharmacists.

(e.1)(1) In addition to and without limiting the authority granted by Code Section 43-34-23, a physician may delegate to a physician assistant, in accordance with a job description, the authority to issue a prescription drug order or orders for any device as defined in Code

Section 26-4-5 or to issue any dangerous drug as defined in Code Section 16-13-71 or any Schedule III, IV, or V controlled substance as defined in Code Section 16-13-21 on a prescription drug order or prescription device order form as specified in paragraph (3) of this subsection. Delegation of such authority shall be contained in the job description required by this Code section. The delegating physician shall remain responsible for the medical acts of the physician assistant performing such delegated acts and shall adequately supervise the physician assistant. If an existing job description for a physician assistant does not contain such authority to order a prescription drug or device order as provided by this subsection, that physician assistant may not issue any such prescription drug or device order until a new job description delegating such authority is submitted to and approved by the board. Nothing in this Code section shall be construed to authorize the written prescription drug order of a Schedule I or II controlled substance.

(2) Nothing in this subsection shall be construed to create a presumption of liability, either civil or criminal, on the part of a pharmacist who is duly licensed under Title 26 and who in good faith fills a prescription drug or device order presented by a patient pursuant to this subsection. The pharmacist shall presume that the prescription drug or device order was issued by a physician assistant duly licensed under this article who has qualified under this Code section to prescribe pharmaceutical agents. The pharmacist shall also presume that the pharmaceutical agent prescribed by the physician assistant is an approved pharmaceutical agent, unless the pharmacist has actual or constructive knowledge to the contrary.

(3) The physician assistant shall only be authorized to exercise the rights granted under this subsection using a prescription drug or device order form which includes the name, address, and telephone number of the prescribing supervising or alternate supervising physician, the patient's name and address, the drug or device prescribed, the number of refills, and directions to the patient with regard to the taking and dosage of the drug. A prescription drug order which is transmitted either electronically or via facsimile shall conform to the requirements set out in paragraphs (1) and (2) of subsection (c) of Code Section 26-4-80, respectively. Any form containing less information than that described in this paragraph shall not be offered to or accepted by any pharmacist who is duly licensed under Title 26.

(4) The physician assistant or office staff shall notify the patient that the patient has the right to see the physician prior to any prescription drug or device order being issued by the physician assistant.

(5) Nothing in this Code section shall be construed to authorize a physician assistant to authorize refills of any drug for more than 12 months from the date of the original prescription drug or device order.

(6) A supervising physician or alternate supervising physician shall evaluate or examine, at least every three months, any patient receiving controlled substances.

(7) In addition to the copy of the prescription drug or device order delivered to the patient, a record of such prescription shall be maintained in the patient's medical record in the following manner:

(A) The physician assistant carrying out a prescription drug or device order shall document such order either in writing or by electronic means; and

(B) Except in facilities operated by the Department of Public Health, the supervising physician shall review the prescription drug or device order copy and medical record entry for prescription drug or device orders issued within the past 30 days by the physician assistant. Such review may be achieved with a sampling of no less than 50 percent of such prescription drug or device order copies and medical record entries.

(8) A physician assistant is not permitted to prescribe drugs or devices except as authorized in the physician assistant's job description and in accordance with this article.

(9) The board shall adopt rules establishing procedures to evaluate an application for a job description containing the authority to order a prescription drug or device and any other rules the board deems necessary or appropriate to regulate the practice of physician assistants, to carry out the intent and purpose of this article, or to protect the public welfare.

(10) A physician assistant authorized by a primary supervising physician to order controlled substances pursuant to this Code section is authorized to register with the federal Drug Enforcement Administration.

(11) A physician assistant delegated the authority by the primary supervising physician to issue a prescription drug or device order shall be required to complete a minimum of three hours of continuing education biennially in practice specific pharmaceuticals in which the physician assistant has prescriptive order privileges.

(12) A managed care system, health plan, hospital, insurance company, or other similar entity shall not require a physician to be a party to a job description as a condition for participation in or reimbursement from such entity.

(e.2) A physician assistant may be delegated the authority to request, receive, and sign for professional samples and may distribute professional samples to patients so long as delegation of such authority is contained in a job description and the professional samples are within the specialty of the supervising physician. The office or facility at which the physician assistant is working must maintain a general list of professional samples approved by the supervising physician for request, receipt, and distribution by the physician assistant as well as a complete list of the specific number and dosage of each professional sample received. Professional samples that are distributed by a physician assistant shall be so noted in the patient's medical record. In addition to the requirements of this Code section, all professional samples shall be maintained as required by applicable state and federal law and regulations. As used in this subsection, the term "professional samples" means complimentary doses of a drug, medication vouchers, or medical devices provided by the manufacturer for use in patient care.

(f) A physician employed by the Department of Public Health or by any institution thereof or by a local health department whose duties are administrative in nature and who does not normally provide health care to patients as such employee shall not be authorized to apply for or utilize the services of any physician assistant employed by the Department of Public Health or by any institution thereof or by a local health department.

(g) Nothing in this article shall be construed to prohibit a physician assistant from performing those acts the performance of which have been delegated to that physician assistant pursuant to and in conformity with Code Section 43-34-23.

(h) A physician and a physician assistant may enter into a temporary practice agreement exempt from any filing fees with the board by which agreement the physician supervises the services provided by the physician assistant to patients at a specific facility or program that provides medical services only to indigent patients in medically underserved or critical need population areas of the state, as determined by the board, or pursuant to Article 8 of Chapter 8 of Title 31, provided that:

(1) Such services are provided primarily to financially disadvantaged patients;

(2) Such services are free or at a charge to the patient based solely on the patient's ability to pay and provided, further, that such charges do not exceed the actual cost to the facility or program;

(3) The supervising physician and the physician assistant voluntarily and gratuitously donate their services;

(4) Prior to providing any patient services, a copy of the temporary practice agreement, signed by both the supervising physician and the

physician assistant, is on file at the facility or program and is sent to the board;

(5) The temporary practice agreement is for a specified period of time, limits the services of the physician assistant to those within the usual scope of practice of the supervising physician, and is signed by both the supervising physician and the physician assistant prior to the physician assistant providing patient services; and

(6) The facility or program has notified the board of its intent to provide patient services and utilize licensed physicians and physician assistants under the conditions set out in this subsection.

(i)(1) Notwithstanding any provision of this article to the contrary, a physician assistant licensed pursuant to this article or licensed, certified, or otherwise authorized to practice in any other state or federal jurisdiction and whose license, certification, or authorization is in good standing who responds to a need for medical care created by conditions which characterize those of a state of emergency or public health emergency may render such care that the physician assistant is able to provide with such supervision as is available at the immediate scene or at the local site where such need for medical care exists or at a relief site established as part of a state or local safety plan established pursuant to Chapter 3 of Title 38. Such services shall be provided by a physician assistant in response to the request of an appropriate state or local official implementing a state or local emergency management plan or program, and in accordance with applicable guidelines established by such officials or plans. The authority granted by this Code section shall last no longer than 48 hours or such time as the board may establish under guidelines for supervision of the physician assistant rendering medical care.

(2) For the purposes of this subsection, the term “public health emergency” has the same meaning as in paragraph (6) of Code Section 38-3-3, and the term “state of emergency” has the same meaning as in paragraph (7) of Code Section 38-3-3.

(j) A physician assistant shall be allowed to make a pronouncement of death pursuant to authority delegated by the supervising physician of the physician assistant and to certify such pronouncement in the same manner as a physician.

(k) It shall be unlawful for a physician to be an employee of a physician assistant, alone or in combination with others, if the physician is required to supervise the physician assistant; provided, however, that this shall not apply to arrangements of this nature which were approved by the board on or before July 1, 2009. Arrangements approved prior to such date are nontransferable. Such conduct shall be subject to sanctions by the board as to the physician and the physician assistant.

(l) Except for death certificates and assigning a percentage of a disability rating, a physician assistant may be delegated the authority to sign, certify, and endorse all documents relating to health care provided to a patient within his or her scope of authorized practice, including, but not limited to, documents relating to physical examination forms of all state agencies and verification and evaluation forms of the Department of Human Services, the State Board of Education, local boards of education, the Department of Community Health, and the Department of Corrections. (Ga. L. 1972, p. 676, § 4; Ga. L. 1982, p. 1148, § 2; Ga. L. 1984, p. 22, § 43; Ga. L. 1984, p. 611, § 1; Ga. L. 1989, p. 261, § 4; Ga. L. 1995, p. 827, § 2; Ga. L. 1997, p. 935, § 3; Ga. L. 1999, p. 81, § 43; Ga. L. 2001, p. 788, § 1; Ga. L. 2002, p. 1043, § 2; Ga. L. 2004, p. 581, § 2; Ga. L. 2005, p. 1232, § 1/SB 173; Ga. L. 2006, p. 475, § 1/HB 873; Ga. L. 2006, p. 476, § 1/HB 832; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2009, p. 859, § 1/HB 509; Ga. L. 2010, p. 878, § 43/HB 1387; Ga. L. 2011, p. 441, § 3/HB 303; Ga. L. 2011, p. 705, § 5-26/HB 214.)

The 2009 amendments. — The first 2009 amendment, effective July 1, 2009, substituted “Department of Community Health” for “Department of Human Resources” twice in subsection (f). The second 2009 amendment, effective July 1, 2009, rewrote this Code section.

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, redesignated former divisions (a)(2)(i) through (a)(2)(iii) as subparagraphs (a)(2)(A) through (a)(2)(C), respectively, and revised punctuation in the first sentence of paragraph (e.1)(1).

The 2011 amendments. — The first 2011 amendment, effective July 1, 2011, deleted a comma following “Code Section 26-4-5” in the first sentence of paragraph (e.1)(1); in paragraph (e.1)(9), inserted “to regulate the practice of physician assistants,” near the middle, and substituted “article” for “Code section” near the end; deleted former paragraph (e.1)(10), which read: “Nothing in this Code section is intended to repeal any rules established by the board relating to the requirements and duties of physician assistants in remote practice sites.”; redesignated former paragraphs (e.1)(11) and (e.1)(12) as present paragraphs (e.1)(10) and (e.1)(11), respectively; redesignated the ending undesignated paragraph of subsection (e.1) as paragraph (e.1)(12); in subsection

(e.2), substituted the present provisions of the first and second sentences for the former provisions, which read: “A physician assistant shall be allowed to request, receive, and sign for professional samples and may distribute professional samples to patients, pursuant to authority delegated by the supervising physician of that physician assistant. Delegation of such authority shall be contained in the job description required by this Code section; provided, however, the office or facility at which the physician assistant is working must maintain a list of professional samples approved by the supervising physician for request, receipt, and distribution by the physician assistant as well as a complete list of the specific number and dosage of each professional sample received and dispensed.”, and added the third sentence; and added subsection (l). The second 2011 amendment, effective July 1, 2011, substituted “Department of Public Health” for “Division of Public Health of the Department of Community Health” in subparagraph (e.1)(7)(B); and substituted “Department of Public Health” for “Department of Community Health” in two places in subsection (f).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, in paragraph (b)(3), “part; provided,” was substituted for “part. Provided” in the second sentence, and “physician assistants” was

substituted for "physician assistant" in the second sentence.

Law reviews. — For note on 1989 amendment to this Code section, see 6

Georgia St. U.L. Rev. 304 (1989). For note on 1995 amendments to this Code section and § 43-34-102, see 12 Georgia St. U.L. Rev. 301 (1995).

JUDICIAL DECISIONS

Supervision of student nurse anesthetists is not one of the functions properly delegated to a physician's assistant trained in anesthesia. *Central Anesthesia Assocs. v. Worthy*, 254 Ga. 728, 333 S.E.2d 829 (1985).

Differentiating physician's assistants and nurse practitioners not unlawful under federal equal pay provisions. — Pattern of state regulation, which differentiated physician's assistants and nurse practitioners, in that a physician's assistant may perform "any functions performed by the applying physician which the physician's assistant is qualified to perform," while nurse practitioners are confined by their guidelines and protocols, constituted an "other factor other than sex" that created a defense for the employer under the federal Equal Pay Act, 29 U.S.C. § 206(d)-(1)(iv). *Beall v. Curtis*, 603 F. Supp. 1563 (M.D. Ga.), *aff'd*, 778 F.2d 791 (11th Cir. 1985).

Negligence per se. — As it was undisputed that the physician's assistant who treated and prescribed drugs for the malpractice plaintiff had not been supervised as required by O.C.G.A. §§ 43-34-103(e.1)(1) and 43-34-105, no testimony from a member of the Composite State Board of Medical Examiners (now Georgia Composite Medical Board) was required to show a violation of these statutes, and the plaintiff was entitled to summary judgment on plaintiff's claim of negligence per se. *Rockefeller v. Kaiser Found. Health Plan of Ga.*, 251 Ga. App. 699, 554 S.E.2d 623 (2001).

Cited in United States v. Composite State Bd. of Medical Exmrs., 487 F. Supp. 495 (N.D. Ga. 1980); *Cardio TVP Surgical Assocs. v. Gillis*, 272 Ga. 404, 528 S.E.2d 785 (2000).

OPINIONS OF THE ATTORNEY GENERAL

Authority of physician's assistants to prescribe controlled substances. — Physician's assistants may prescribe Schedule III, IV, and V controlled sub-

stances when acting under the requisite supervision of a physician. 2000 Op. Att'y Gen. No. 00-10.

43-34-104. Notice of approval or disapproval; issuance of license.

(a) Within a reasonable time after receipt of the documents required by this article, the board shall give to the applicant written notice of approval or disapproval of the physician assistant's application; and, if approval of the application is given, the board shall issue to the assistant a license authorizing the assistant to perform medical tasks under the direction and supervision of the physician.

(b) The board shall not approve an application unless it finds from the information forwarded with the application that the applicant has complied with the requirements in this article. (Ga. L. 1972, p. 676, § 5; Ga. L. 1997, p. 935, § 4; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, in subsection (a), substituted “this article” for “Code Section 43-34-103”, inserted “physician assistant’s”, and deleted “applying” preceding “physician” at the end; and, in subsection (b), substituted “applicant has complied with the requirements in this article” for “proposed physi-

cian’s assistant is fully qualified to perform the tasks described in the job description and will be utilized in a manner that will not endanger the health and welfare of patients upon whom he may perform the described medical tasks” at the end.

JUDICIAL DECISIONS

Cited in *Cardio TVP Surgical Assocs. v. Gillis*, 272 Ga. 404, 528 S.E.2d 785 (2000).

43-34-105. Performance of tasks in accordance with job description.

On receipt of notice of the board’s approval, a physician assistant, under the direction of the applying physician, may perform the tasks described in the job description, provided that nothing in this Code section shall make unlawful the performance of a medical task by the physician assistant, whether or not such task is specified in the general job description, when it is performed under the direct supervision and in the presence of the physician utilizing him or her. (Ga. L. 1972, p. 676, § 6; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, substituted “physician” for “phy-

sician’s” twice and added “or her” at the end.

JUDICIAL DECISIONS

Determination of medical tasks physician’s assistant eligible to perform. — Because it is a matter strictly for the Composite State Board of Medical Examiners (now Georgia Composite Medical Board) to determine the nature and scope of the medical tasks for which any physician’s assistant (PA) may be qualified to perform, the idea that any other entity can determine whether it is appropriate for a PA to perform any specific type of procedure, whether or not the procedure is contained within the PA’s job description, is contrary to the purposes and intent of O.C.G.A. Art. 4, Ch. 34, T. 43. *Cardio TVP Surgical Assocs. v. Gillis*, 272 Ga. 404, 528 S.E.2d 785 (2000), reversing

Gillis v. Cardio TVP Surgical Assocs., P.C., 239 Ga. App. 350, 520 S.E.2d 767 (1999).

Negligence per se. — As it was undisputed that the physician’s assistant who treated and prescribed drugs for the malpractice plaintiff had not been supervised as required by O.C.G.A. §§ 43-34-103(e.1)(1) and 43-34-105, no testimony from a member of the Composite State Board of Medical Examiners (now Georgia Composite Medical Board) was required to show a violation of these statutes, and the plaintiff was entitled to summary judgment on plaintiff’s claim of negligence per se. *Rockefeller v. Kaiser Found. Health Plan of Ga.*, 251 Ga. App. 699, 554 S.E.2d 623 (2001).

43-34-106. Posting notice that assistants are being utilized.

Any physician, clinic, or hospital using a physician assistant shall post a notice to that effect in a prominent place. (Ga. L. 1972, p. 676, § 10; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, substituted “physician” for “physician’s” in the middle of this Code section.

JUDICIAL DECISIONS

Determination of medical tasks physician’s assistant eligible to perform. — Because it is a matter strictly for the Composite State Board of Medical Examiners (now Georgia Composite Medical Board) to determine the nature and scope of the medical tasks for which any physician’s assistant (PA) may be qualified to perform, the idea that any other entity can determine whether it is appro-

priate for a PA to perform any specific type of procedure, whether or not the procedure is contained within the PA’s job description, is contrary to the purposes and intent of O.C.G.A. Art. 4, Ch. 34, T. 43. *Cardio TVP Surgical Assocs. v. Gillis*, 272 Ga. 404, 528 S.E.2d 785 (2000), reversing *Gillis v. Cardio TVP Surgical Assocs., P.C.*, 239 Ga. App. 350, 520 S.E.2d 767 (1999).

43-34-107. Termination of approval and revocation of license; notice and hearing; sanctions.

(a) The approval of a physician’s utilization of a physician assistant may be terminated and the license revoked by the board when, after due notice and a hearing, in accordance with this Code section, it shall find that the assistant is incompetent or has committed unethical or immoral acts, including, but not limited to, holding himself or herself out or permitting another to represent him or her as a licensed physician; performing otherwise than at the direction of a physician approved by the board to utilize the assistant’s services; habitually using intoxicants or drugs to such an extent that he or she is unable safely to perform as an assistant to the physician; or being convicted in any court, state or federal, of any felony or other criminal offense involving moral turpitude.

(b) Before the board shall give written notice to the physician assistant of termination of approval granted by it to an assistant, it will give to the assistant a timely and reasonable written notice indicating the general nature of the charges, accusation, or complaint preferred against him and stating that the assistant will be given an opportunity to be heard concerning such charges or complaints; and it shall hold a public hearing within a reasonable time. Following such hearing, the board shall determine, on the basis of its regulations, whether the approval of the assistant shall be terminated.

(c) In hearings held pursuant to this Code section, the board shall apply the rules of evidence as prescribed in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(d) The board may impose on a physician assistant any sanction authorized under subsection (b) of Code Section 43-34-8 upon a finding of any conduct specified in subsection (a) of Code Section 43-34-8. (Ga. L. 1972, p. 676, § 7; Ga. L. 1982, p. 3, § 43; Ga. L. 1997, p. 935, § 5; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, substituted "physician" for "physician's" throughout this Code section and added subsection (d).

JUDICIAL DECISIONS

Cited in Cardio TVP Surgical Assocs. v. Gillis, 272 Ga. 404, 528 S.E.2d 785 (2000).

RESEARCH REFERENCES

ALR. — Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 ALR 1388.

Criminal prosecution or disciplinary action against medical practitioner for fraud

in connection with claims under Medicaid, Medicare, or similar welfare program for providing medical service, 50 ALR3d 549; 70 ALR4th 132.

43-34-108. Powers and duties of board.

In addition to the powers specifically delegated to it in this article, the board shall have the authority to perform all acts which are necessary, proper, or incidental to the efficient development of the category of health care established by this article. The board shall have the authority to promulgate rules and regulations governing the definitions of delegation by physicians to qualified persons other than physician assistants of any acts, duties, or functions which are permitted by law or established by custom. Any power vested by law in the board, but not implemented by specific provisions for the exercise thereof, may be executed and carried out by the board in a reasonable manner, pursuant to such rules, regulations, and procedures as the board may adopt and subject to such limitations as may be provided by law. (Ga. L. 1972, p. 676, § 8; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, substituted "physician" for "physician's" in the middle of the second sentence.

Administrative rules and regula-

tions. — Rules of the profession of physician's assistants, Official Compilation of the Rules and Regulations of the State of Georgia, Composite State Board of Medical Examiners, Chapter 360-5.

43-34-109. Involvement of supervising physician in patient’s care.

When a patient receives medical services from a physician assistant, the supervising physician’s involvement in the patient’s care, including patient evaluation and follow-up care by the supervising physician, shall be appropriate to the nature of the practice and the acuity of the patient’s medical issue, as determined by the supervising physician. (Code 1981, § 43-34-109, enacted by Ga. L. 2009, p. 859, § 1/HB 509; Ga. L. 2011, p. 441, § 4/HB 303.)

Effective date. — This Code section became effective July 1, 2009.
The 2011 amendment, effective July 1, 2011, substituted the present provisions of this Code section for the former provisions, which read: “If a patient receives medical services from a physician

assistant more than two times in a 12 month period, the primary or alternate supervising physician shall see such patient on no less than one following visit by the patient during the same 12 month period.”

43-34-110. Abortions not to be performed by physician assistants.

Nothing in this article shall be construed to allow a physician assistant to perform an abortion or to administer, prescribe, or issue a drug order that is intended to cause abortion to occur pharmacologically. (Code 1981, § 43-34-110, enacted by Ga. L. 2009, p. 859, § 1/HB 509.)

Effective date. — This Code section became effective July 1, 2009.

Cross references. — Woman’s Right to Know, T. 31, C. 9A.

ARTICLE 5

USE OF MARIJUANA FOR TREATMENT OF CANCER AND GLAUCOMA

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative

Law and Procedure, § 115 et seq. 81A
C.J.S., States, §§ 79 et seq., 120 et seq. 82
C.J.S., Statutes, §§ 203, 281.

43-34-120. Short title.

This article shall be known and may be cited as the “Controlled Substances Therapeutic Research Act.” (Code 1933, § 84-901A, enacted by Ga. L. 1980, p. 82, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

Cross references. — Controlled substances generally, T. 16, C. 13. Care and treatment of cancer patients, T. 31, C. 15. Breast cancer patient care, T. 33, C. 24, A. 3.

Editor’s notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, reenacted this Code section without change.

43-34-121. Legislative intent.

(a) The General Assembly finds and declares that the potential medicinal value of marijuana has received insufficient study due to a lack of financial incentives for the undertaking of appropriate research by private drug manufacturing concerns. Individual physicians cannot feasibly utilize marijuana in clinical trials because of federal governmental controls which involve expensive, time-consuming approval and monitoring procedures.

(b) The General Assembly further finds and declares that limited studies throughout the nation indicate that marijuana and certain of its derivatives possess valuable and, in some cases, unique therapeutic properties, including the ability to relieve nausea and vomiting which routinely accompany chemotherapy and irradiation used to treat cancer patients. Marijuana also may be effective in reducing intraocular pressure in glaucoma patients who do not respond well to conventional medications.

(c) The General Assembly further finds and declares that, in enabling individual physicians and their patients to participate in a state-sponsored program for the investigational use of marijuana and its derivatives, qualified physicians and surgeons throughout the state will be able to study the benefits of the drug in a controlled clinical setting, and additional knowledge will be gained with respect to dosage and effects.

(d) It is the intent of the General Assembly in enacting this article to permit research into the therapeutic applications of marijuana and its derivatives in cancer and glaucoma patients. This would allow qualified physicians approved by the Patient Qualification Review Board created by Code Section 43-34-124 to provide the drug on a compassionate basis to seriously ill persons suffering from the severe side effects of chemo-

therapy or radiation treatment and to persons suffering from glaucoma who are not responding to conventional treatment, which persons would otherwise have no lawful access to it. It is the further intent of the General Assembly to facilitate clinical trials of marijuana and its derivatives, particularly with respect to persons suffering from cancer and glaucoma who would be benefited by use of the drug.

(e) This article is limited to clinical trials and research into therapeutic applications of marijuana only for use in treating glaucoma and in treating the side effects of chemotherapeutic agents and radiation and should not be construed as either encouraging or sanctioning the social use of marijuana. Nothing in this article shall be construed to encourage the use of marijuana in lieu of or in conjunction with other accepted medical treatment, but only as an adjunct to such accepted medical treatment. (Code 1933, § 84-902A, enacted by Ga. L. 1980, p. 82, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

Cross references. — Care and treatment of cancer patients generally, T. 31, C. 15.

Editor's notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, reenacted this Code section without change.

RESEARCH REFERENCES

Am. Jur. 2d. — 25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 17, 19, 69.

C.J.S. — 28 C.J.S., Drugs and Narcotics, §§ 211, 212.

43-34-122. Definitions.

As used in this article, the term:

- (1) "Board" means the Georgia Composite Medical Board.
- (2) "Marijuana" means marijuana or tetrahydrocannabinol, as defined or listed in Article 2 of Chapter 13 of Title 16.
- (3) "Physician" means a person licensed to practice medicine pursuant to Article 2 of this chapter.
- (4) "Program" means the Controlled Substances Therapeutic Research Program established pursuant to Code Section 43-34-123.
- (5) "Review board" means the Patient Qualification Review Board established pursuant to Code Section 43-34-124. (Code 1933, § 84-903A, enacted by Ga. L. 1980, p. 82, § 1; Ga. L. 1982, p. 3, § 43; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, substituted the present provisions of paragraph (1) for the former provisions which read: "Composite board"

means the Composite State Board of Medical Examiners established pursuant to Article 2 of this chapter."

43-34-123. Controlled Substances Therapeutic Research Program.

(a) There is established under the Georgia Composite Medical Board the Controlled Substances Therapeutic Research Program, which shall be administered by the board. Under the program, the board shall act as a sponsor of state-wide investigational studies, utilizing as drug investigators individual physicians who elect to participate in accordance with the guidelines and protocols developed by the board. Such guidelines and protocols shall be designed to ensure that stringent security and record-keeping requirements for research drugs are met and that participants in the program meet those research standards necessary to establish empirical bases for the evaluation of marijuana as a medically recognized therapeutic substance. The board shall promulgate such rules and regulations as it deems necessary or advisable to administer the program. In promulgating such guidelines, protocols, rules, and regulations, the board shall take into consideration those pertinent rules and regulations promulgated by the Federal Drug Enforcement Agency, the Food and Drug Administration, and the National Institute on Drug Abuse.

(b) The program shall be limited to patients who are certified to the board by a physician as being:

(1) Cancer patients involved in a life-threatening situation in which treatment by chemotherapy or radiology has produced severe side effects; or

(2) Glaucoma patients who are not responding to conventional controlled substances.

(c) No patient may be admitted to the program without full disclosure by the physician of the experimental nature of the program and of the possible risks and side effects of the proposed treatment.

(d) The cost of any blood test required by the federal Food and Drug Administration prior to entrance into the program shall be paid by the patient seeking entrance into the program.

(e) Only the following persons shall have access to the names and other identifying characteristics of patients in the program for whom marijuana has been prescribed under this article:

(1) The board;

(2) The review board created by Code Section 43-34-124;

(3) The Attorney General or his or her designee;

(4) Any person directly connected with the program who has a legitimate need for the information; and

(5) Any federal agency having responsibility for the program. (Code 1933, § 84-904A, enacted by Ga. L. 1980, p. 82, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, deleted “composite” preceding “board” throughout this Code section; substituted “Georgia Composite Medical

Board” for “Composite State Board of Medical Examiners” near the beginning of the first sentence; and inserted “or her” near the end of paragraph (e)(3).

JUDICIAL DECISIONS

In a prosecution for possession of marijuana, the defendant was not entitled to an instruction on justification based on the defendant’s use of marijuana

for certain physical ailments. *Carlson v. State*, 240 Ga. App. 589, 524 S.E.2d 283 (1999).

RESEARCH REFERENCES

Am. Jur. 2d. — 25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 17, 19, 231. 39 Am. Jur. 2d, Health, §§ 4, 9.

C.J.S. — 28 C.J.S., Drugs and Narcotics, §§ 1213, 225, 226.

43-34-124. Patient Qualification Review Board; members; officers; meetings; duties; exception to open meetings requirements.

(a) The board shall appoint the Patient Qualification Review Board. Each member of the review board shall be approved for such membership by a majority vote of the board and shall serve at the pleasure of the board. The review board shall be composed of:

- (1) A board certified physician in ophthalmology;
- (2) A board certified physician in surgery;
- (3) A board certified physician in internal medicine and medical oncology;
- (4) A board certified physician in psychiatry;
- (5) A board certified physician in radiology; and
- (6) A pharmacist licensed under Chapter 4 of Title 26, relating to pharmacists, pharmacy, and drugs.

(b) The review board shall elect from its members a chairperson and a vice chairperson. The review board shall hold regular meetings at least once every 60 days and shall meet at such additional times as shall be called by the chairperson of the review board or the chairperson of the board. Each member of the review board shall receive for services for each day’s attendance upon meetings of such board the same amount authorized by law for members of the General Assembly for attendance upon meetings of the General Assembly.

(c) The board shall adopt such rules and regulations as it deems necessary for the performance of the duties of the review board.

(d) The review board shall review all patient applicants for the program and their physicians and shall certify those qualified for participation in the program. The review board shall additionally certify pharmacies which are licensed by the state and which are otherwise qualified and certify physicians regarding the distribution of marijuana pursuant to Code Section 43-34-125. Meetings of the review board to certify patients, physicians, or pharmacies shall not be open to the public, as otherwise required by Chapter 14 of Title 50. (Code 1933, § 84-905A, enacted by Ga. L. 1980, p. 82, § 1; Ga. L. 2002, p. 415, § 43; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, deleted “composite” preceding “board” throughout this Code section; and, in subsection (b), substituted “chairperson” for “chairman” and “president”

throughout the subsection and substituted “vice chairperson” for “vice-chairman” at the end of the first sentence.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 11.

43-34-125. Receipt of marijuana by board; distribution; responsibility for costs of obtaining and testing marijuana.

(a) The board shall apply to contract with the National Institute on Drug Abuse for receipt of marijuana pursuant to this article and pursuant to regulations promulgated by the National Institute on Drug Abuse, the Food and Drug Administration, and the Federal Drug Enforcement Agency.

(b) The board shall cause marijuana approved for use in the program to be transferred to a certified pharmacy, licensed by the state, for distribution to the certified patient by a licensed pharmacist upon a written order for research medication of the certified physician, pursuant to this article. Any reasonable costs incurred by the board in obtaining or testing marijuana shall be charged to participating physicians who may seek reimbursement from their research subjects utilizing the marijuana. (Code 1933, § 84-906A, enacted by Ga. L. 1980, p. 82, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, deleted “composite” preceding “board” throughout this Code section.

JUDICIAL DECISIONS

Cited in May v. State, 179 Ga. App. 736, 348 S.E.2d 61 (1986).

RESEARCH REFERENCES

C.J.S. — 28 C.J.S., Drugs and Narcotics, §§ 71, 72.

43-34-126. Immunity of program participants from state prosecution for possession or use of authorized marijuana.

Patient participants in the program are immune from state prosecution for possession of marijuana as authorized by this article and under the program established in this article. A person authorized under this program shall not possess an amount of marijuana in excess of the amount prescribed under the authority of this article. The amount prescribed shall be maintained in the container in which it was placed at the time the prescription was filled. Physician, pharmacy, and pharmacist participants in the program are immune from state prosecution for possession, distribution, and any other use of marijuana, which use is authorized such persons by this article. Any such possession, distribution, or other use not authorized by this article shall be enforced and punished as provided in Chapter 13 of Title 16, relating to controlled substances and dangerous drugs, and Chapter 4 of Title 26, relating to pharmacists and pharmacies. (Code 1933, § 84-907A, enacted by Ga. L. 1980, p. 82, § 1; Ga. L. 1992, p. 1634, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

Editor’s notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, reenacted this Code section without change.

RESEARCH REFERENCES

C.J.S. — 28 C.J.S., Drugs and Narcotics, §§ 211, 212, 225, 226.

ARTICLE 6

RESPIRATORY CARE

Editor’s notes. — Ga. L. 1986, p. 264, § 2, which enacted this article, provides that this article shall become effective upon necessary appropriations being specifically made by the General Assembly to fund this article and that the article shall

stand repealed should the General Assembly ever thereafter fail to fully appropriate the funds necessary to implement this article. The funding necessary to implement this article was made beginning fiscal year 1987.

Law reviews. — For annual survey of administrative law, see 38 Mercer L. Rev. 17 (1986).

43-34-140. (For effective date of repeal, see note.) Short title.

This article shall be known and may be cited as the “Respiratory Care Practices Act.” (Code 1981, § 43-34-140, enacted by Ga. L. 1986, p. 264, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

Editor’s notes. — See the Editor’s note following the article heading as to the repeal of this Code section.

Ga. L. 2009, p. 859, § 1, effective July 1, 2009, reenacted this Code section without change.

43-34-141. (For effective date of repeal, see note.) Legislative finding and declaration.

The General Assembly finds and declares that the practice of respiratory care in Georgia affects the public health, safety, and welfare and that it is necessarily a proper subject of regulation and control. (Code 1981, § 43-34-141, enacted by Ga. L. 1986, p. 264, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

Editor’s notes. — See the Editor’s note following the article heading as to the repeal of this Code section.

Ga. L. 2009, p. 859, § 1, effective July 1, 2009, reenacted this Code section without change.

43-34-142. (For effective date of repeal, see note.) Definitions.

As used in this article, the term:

(1) “Board” means the Georgia Composite Medical Board.

(2) “Respiratory care” means the rendering of services to patients with deficiencies or abnormalities which affect the pulmonary and cardiac systems and which services involve therapy, management, rehabilitation, diagnostic evaluation, education, or care of such patients with regard to such deficiencies or abnormalities.

(3) “Respiratory care professional” means any person certified under this article to practice respiratory care. (Code 1981, § 43-34-142, enacted by Ga. L. 1986, p. 264, § 1; Ga. L. 1993, p. 1497, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, substituted “Georgia Composite Medical Board” for “Composite State Board of Medical Examiners as created by Code Section 43-34-21” at the end of paragraph (1).

Editor’s notes. — See the Editor’s note following the article heading as to the repeal of this Code section.

43-34-143. (For effective date of repeal, see note.) Powers and duties of board.

The board, in consultation with the advisory committee, shall have the power and responsibility to:

- (1) Determine the qualifications and fitness of applicants for certification, renewal of the certificate, and reciprocal certification;
- (2) Adopt and revise rules consistent with the laws of the State of Georgia that are necessary to conduct its business, carry out its duties, and administer this article;
- (3) Examine for, approve, issue, deny, revoke, suspend, and renew the certification of respiratory care professional applicants and certificate holders under this article and conduct hearings in connection with these actions;
- (4) Conduct hearings on complaints concerning violations of this article and the rules adopted under this article and cause the prosecution and enjoinder of the violations;
- (5) Establish application, examination, and certification fees;
- (6) Request and receive the assistance of state educational institutions or other state agencies;
- (7) Prepare information of consumer interest describing the regulatory functions of the board and describing the procedures by which consumer complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies; and
- (8) Establish continuing education requirements. (Code 1981, § 43-34-143, enacted by Ga. L. 1986, p. 264, § 1; Ga. L. 1993, p. 1497, § 2; Ga. L. 2009, p. 859, § 1/HB 509.)

Editor's notes. — See the Editor's note following the article heading as to the repeal of this Code section.

Ga. L. 2009, p. 859, § 1, effective July 1, 2009, reenacted this Code section without change.

43-34-144. (For effective date of repeal, see note.) Requirements for certification; supervision.

(a) Each applicant for certification as a respiratory care professional shall meet the following requirements:

- (1) Is at least 18 years of age;
- (2) Has submitted a completed application as required by the board;
- (3) Has submitted any fees required by the board;

(4) Has successfully passed the entry level examination given by the National Board for Respiratory Care, Inc., or such other examination as the board may in its discretion administer or approve; and

(5) Has met such other requirements as may be prescribed by the board.

(b) In addition to the requirements specified in subsection (a) of this Code section, each applicant for certification under this article shall be working under the supervision or direction of a person licensed under Article 2 of this chapter and shall, in order to maintain certification, continue to work under the supervision or direction of a person licensed under Article 2 of this chapter. (Code 1981, § 43-34-145, enacted by Ga. L. 1986, p. 264, § 1; Ga. L. 1993, p. 1497, § 4; Code 1981, § 43-34-144, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-145 as present Code Section 43-34-144; and substituted “article” for “chapter” in the middle of subsection (b).

Editor’s notes. — See the Editor’s note following the article heading as to the repeal of this Code section.

Former Code Section 43-34-144, concerning certification of persons practicing respiratory care on April 27, 1993, was based on Code 1981, § 43-34-144, enacted by Ga. L. 1986, p. 264, § 1; Ga. L. 1993, p. 1497, § 3; Ga. L. 1994, p. 97, § 43 and was repealed by Ga. L. 2009, p. 859, § 1, effective July 1, 2009.

43-34-145. (For effective date of repeal, see note.) Notice to applicant of acceptance or rejection.

After evaluation of an application and other evidence submitted, the board shall notify each applicant that the application and evidence submitted are satisfactory and accepted or unsatisfactory and rejected. If rejected, the notice shall state the reasons for the rejection. (Code 1981, § 43-34-146, enacted by Ga. L. 1986, p. 264, § 1; Code 1981, § 43-34-145, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-146 as present Code Section 43-34-145.

Editor’s notes. — See the Editor’s note following the article heading as to the repeal of this Code section.

Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated former Code Section 43-34-145 as present Code Section 43-34-144.

43-34-146. (For effective date of repeal, see note.) Ownership of certificate; posting; change of address; renewal; inactive status; board authorize to determine renewal requirements.

(a) Any document evidencing certification issued by the board is the property of the board and must be surrendered on demand.

(b) The certificate holder shall display the document evidencing certification in an appropriate and public manner.

(c) The certificate holder shall inform the board of any change of address.

(d) The certificate shall be renewed biennially if the certificate holder is not in violation of this article at the time of application for renewal and if the applicant fulfills current requirements of continuing education as established by the board.

(e) Each person certified under this article is responsible for renewing his or her certificate before the expiration date.

(f) Under procedures and conditions established by the board, a certificate holder may request that his or her certification be declared inactive. The certificate holder may apply for active status at any time and upon meeting the conditions set by the board shall be declared active.

(g) The board shall be authorized to:

(1) Require persons seeking renewal of certification as respiratory care professionals under this article to complete board approved continuing education;

(2) Establish the number of hours of continuing education to be completed as well as the categories in which the continuing education is to be completed; and

(3) Approve courses offered by institutions of higher learning, specialty societies, or professional organizations. (Code 1981, § 43-34-147, enacted by Ga. L. 1986, p. 264, § 1; Code 1981, § 43-34-146, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-147 as present Code Section 43-34-146; deleted "his" preceding "address" near the end of subsection (c); inserted "or her" near the end of subsection (e) and in the first sentence of subsection (f); and added subsection (g).

Editor's notes. — See the Editor's note following the article heading as to the repeal of this Code section.

Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated former Code Section 43-34-146 as present Code Section 43-34-145.

43-34-147. (For effective date of repeal, see note.) Temporary permits.

Upon payment of a fee determined by the board, a temporary permit may be issued to practice respiratory care:

(1) For a period of 12 months to an applicant for certification under Code Section 43-34-148 providing that applicant presents written

evidence verified by oath that the applicant was certified, licensed, or practicing respiratory care within the last 12 months in another state; or

(2) To a person who is a graduate of an accredited respiratory therapy program accredited by the Commission on Accreditation of Allied Health Education Programs, or the equivalent thereof as accepted by the board, pending completion of the other requirements for certification under this article. (Code 1981, § 43-34-147.1, enacted by Ga. L. 1993, p. 1497, § 5; Ga. L. 2002, p. 415, § 43; Code 1981, § 43-34-147, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-147.1 as present Code Section 43-34-147; deleted “for a period of” following “care” at the end of the introductory paragraph; in paragraph (1), substituted “For a period of 12” for “Twelve” at the beginning and substituted “Code Section 43-34-148” for “Code Section 43-34-147.2”;

and, in paragraph (2), substituted “To” for “Eighteen months to” at the beginning.

Editor’s notes. — See the Editor’s note following the article heading as to the repeal of this Code section.

Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated former Code Section 43-34-147 as present Code Section 43-34-146.

43-34-148. (For effective date of repeal, see note.) Reciprocity.

An individual who has been granted certification, registration, licensure, or other authority by whatever name known to practice respiratory care in another state having requirements for such authority to practice which are substantially equal to or which exceed the requirements for a similar certificate in this state may petition the board for reciprocity in this state and, upon submission of an application and requisite fees and upon verification by oath and submission of evidence acceptable to the board, may be granted a certificate to practice respiratory care in Georgia. (Code 1981, § 43-34-147.2, enacted by Ga. L. 1993, p. 1497, § 5; Code 1981, § 43-34-148, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-147.2 as present Code Section 43-34-148.

Editor’s notes. — See the Editor’s note following the article heading as to the repeal of this Code section.

Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated former Code Section 43-34-148 as present Code Section 43-34-149.

43-34-149. (For effective date of repeal, see note.) Sanctions.

The board, in consultation with the advisory committee, may impose on a respiratory care professional any sanction authorized under subsection (b) of Code Section 43-34-8 upon a finding of any conduct

specified in subsection (a) of Code Section 43-34-8. (Code 1981, § 43-34-148, enacted by Ga. L. 1986, p. 264, § 1; Ga. L. 2000, p. 1706, § 19; Code 1981, § 43-34-149, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-148 as present Code Section 43-34-149; and rewrote this Code section.

Editor's notes. — See the Editor's note following the article heading as to the repeal of this Code section.

Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated former Code Section 43-34-149 as present Code Section 43-34-150.

43-34-150. (For effective date of repeal, see note.) Respiratory care advisory committee.

The board shall appoint a respiratory care advisory committee. The committee shall be composed of persons engaged in the practice of respiratory therapy, persons licensed under Article 2 of this chapter who specialize or are board certified in pulmonary medicine, and such members as the board at its discretion may determine. Members shall receive no compensation for service on the committee. The committee shall have such advisory duties and responsibilities as the board may determine. (Code 1981, § 43-34-149, enacted by Ga. L. 1986, p. 264, § 1; Code 1981, § 43-34-150, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-149 as present Code Section 43-34-150.

Editor's notes. — See the Editor's note following the article heading as to the repeal of this Code section.

Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated former Code Section 43-34-150 as present Code Section 43-34-151.

43-34-151. (For effective date of repeal, see note.) Practice of respiratory care or representation as respiratory care professional without certification prohibited; exceptions; penalty; application of emergency care law.

(a) Unless certified under this article or exempted under subsection (b) of this Code section, no person shall:

(1) Practice respiratory care; or

(2) Represent himself or herself to be a respiratory care professional who is certified under this article.

(b) The prohibition in subsection (a) of this Code section does not apply to:

(1) The delivery of respiratory care by health care personnel who have been formally trained in these modalities and who are duly licensed to provide that care under any other provision of this title;

(2) The practice of respiratory care which is an integral part of the program of study by students enrolled in a respiratory care education program recognized by the Joint Review Committee for Respiratory Therapy Education and the American Medical Association Committee on Allied Health Education and Accreditation (CAHEA) or the equivalent thereof as accepted by the board. Students enrolled in respiratory therapy education programs shall be identified as "student-RCP" and shall only provide respiratory care under direct clinical supervision;

(3) Self-care by a patient or gratuitous care by a friend or family member who does not represent or hold himself or herself out to be a respiratory care professional;

(4) Respiratory care services rendered in the course of an emergency or disaster;

(5) Persons in the military services or working in federal facilities when functioning in the course of their assigned duties;

(6) The performance of respiratory care diagnostic testing by individuals who are certified or registered as pulmonary function technologists by the National Board for Respiratory Care, or equivalent certifying agency, as recognized by the board;

(7) The delivery, assembly, setup, testing, and demonstration of oxygen and aerosol equipment upon the order of a physician licensed under Article 2 of this chapter;

(8) Persons who perform limited respiratory care procedures under the supervision of a certified respiratory care professional in a hospital or nursing home when the board has defined the competencies required to perform such limited respiratory care procedures; or

(9) Persons who perform polysomnography under Code Section 43-34-45.

(c) Any person violating the prohibition of subsection (a) of this Code section shall be guilty of a misdemeanor.

(d) Practitioners regulated under this article shall be covered pursuant to Code Section 51-1-29.

(e) Nothing in this article shall be construed to permit the practice of medicine as defined by this chapter. (Code 1981, § 43-34-150, enacted by Ga. L. 1986, p. 264, § 1; Ga. L. 1993, p. 1497, § 6; Code 1981, § 43-34-151, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-150 as present Code Section 43-34-151; in subsection (b), substituted “technologists” for “technologist” in the middle of paragraph (b)(6), deleted “or” at the end of paragraph (b)(7), substituted “; or” for a period at the end of paragraph (b)(8), and added paragraph (b)(9).

Editor’s notes. — See the Editor’s note following the article heading as to the repeal of this Code section.

Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated former Code Section 43-34-151 as present Code Section 43-34-152.

43-34-152. (For effective date of repeal, see note.) “Georgia Administrative Procedure Act” applicable.

Proceedings under this article shall be governed by Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” (Code 1981, § 43-34-151, enacted by Ga. L. 1986, p. 264, § 1; Ga. L. 1992, p. 6, § 43; Code 1981, § 43-34-152, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-151 as present Code Section 43-34-152.

Editor’s notes. — See the Editor’s note following the article heading as to the repeal of this Code section.

ARTICLE 7

CLINICAL PERFUSIONIST LICENSURE

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, Article 7 of this chapter as enacted by Ga. L. 2002,

p. 1273, § 1, was redesignated as Article 8 of this chapter.

43-34-170. Short title.

This article shall be known and may be cited as the “Clinical Perfusionist Licensure Act.” (Code 1981, § 43-34-170, enacted by Ga. L. 2002, p. 652, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

Editor’s notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, reenacted this Code section without change.

43-34-171. Definitions.

As used in this article, the term:

(1) “Advisory committee” means the committee appointed pursuant to Code Section 43-34-180.

(2) “Board” means the Georgia Composite Medical Board.

(3) "Extracorporeal circulation" means the diversion of a patient's blood through a heart-lung machine or a similar device that assumes the function of the patient's heart, lungs, kidneys, liver, or other organ.

(4) "License" means a license to practice as a licensed clinical perfusionist or provisional licensed clinical perfusionist.

(5) "Licensed clinical perfusionist" means a person licensed as such pursuant to this article.

(6) "Perfusion" means the functions necessary for the support, treatment, measurement, or supplementation of the cardiovascular, circulatory, or respiratory system or other organ, or a combination of such activities, and to ensure the safe management of physiologic functions by monitoring and analyzing the parameters of the systems under the order and supervision of a physician, including, but not limited to:

(A) Extracorporeal support, including:

(i) Cardiopulmonary bypass for adult, pediatric, and neonatal patients;

(ii) Cardiopulmonary bypass for congenital and acquired cardiovascular disorders;

(iii) Extracorporeal circulatory support for renal, neurological, hepatic, and vascular surgery;

(iv) Extracorporeal resuscitation; and

(v) Extracorporeal circulation for long-term support of failing respiratory or cardiac function, or both;

(B) Associated extracorporeal support functions, including:

(i) Myocardial protection;

(ii) Hemofiltration and hemodialysis;

(iii) Anticoagulation and hemostasis monitoring, analysis, and intervention;

(iv) Thermal regulation, including hypothermia and hyperthermia;

(v) Blood gas and blood chemistry monitoring, analysis, and intervention;

(vi) Physiological monitoring, analysis, and intervention; and

(vii) Administration of blood components, pharmaceuticals, chemotherapeutic, and anesthetic agents as directed by a licensed physician;

- (C) Heart failure therapy and support, including:
 - (i) Ventricular assist device management;
 - (ii) Intra-aortic balloon counterpulsation;
 - (iii) Temporary pacemaker management;
 - (iv) External counterpulsation;
 - (v) Transportation of patient on extracorporeal support; and
 - (vi) Periodic flow augmentation therapy;
- (D) Blood management, including:
 - (i) Autotransfusion;
 - (ii) Platelet concentrate; and
 - (iii) Nondifferentiated progenitor cell harvest; and
- (E) Other clinical functions, including:
 - (i) Isolated limb and organ perfusion;
 - (ii) Isolated limb and organ delivery of chemotherapeutics, progenitor cells, gene therapy vectors, and related matters;
 - (iii) Organ preservation;
 - (iv) Thermogenic lavage;
 - (v) Electrophysiological analysis; and
 - (vi) Intravascular membrane oxygenation.

Nothing in this paragraph shall be construed to prevent any licensed health care professional from performing any functions for which such health care professional is legally authorized to perform.

(7) “Perfusion protocols” means perfusion related policies and protocols developed or approved by a licensed health care facility or a physician through collaboration with administrators, licensed clinical perfusionists, and other health care professionals.

(8) “Physician” means a person licensed to practice medicine under Article 2 of this chapter.

(9) “Provisional licensed clinical perfusionist” means a person provisionally licensed pursuant to this article. (Code 1981, § 43-34-171, enacted by Ga. L. 2002, p. 652, § 1; Ga. L. 2009, p. 859, § 1/HB 509; Ga. L. 2011, p. 779, § 1E/SB 100.)

The 2009 amendment, effective July 1, 2009, substituted “Georgia Composite Medical Board” for “Composite State Board of Medical Examiners created by Code Section 43-34-21” at the end of paragraph (2).

The 2011 amendment, effective May 13, 2011, in paragraph (6), rewrote subparagraphs (6)(A) through (6)(E) and added the undesignated paragraph at the end.

43-34-172. Powers and responsibilities of board.

The board, in consultation with the advisory committee, shall have the power and responsibility to:

(1) Determine the qualifications and fitness of applicants for licensure and renewal of licensure;

(2) Adopt and revise rules consistent with the laws of this state that are necessary to conduct its business, carry out its duties, and administer this article;

(3) Examine for, approve, issue, deny, revoke, suspend, sanction, and renew the licenses of board applicants for licensure as licensed clinical perfusionists and provisional licensed clinical perfusionists under this article and conduct hearings in connection with these actions;

(4) Conduct hearings on complaints concerning violations of this article and the rules adopted under this article and cause the prosecution and enjoinder of the violations;

(5) Establish application, examination, and licensure fees;

(6) Request and receive the assistance of state educational institutions or other state agencies and prepare information of consumer interest describing the regulatory functions of the board and the procedures by which consumer complaints are filed with and resolved by the board. The board shall make the information available to the public and appropriate state agencies; and

(7) Establish education, examination, and continuing education requirements. (Code 1981, § 43-34-172, enacted by Ga. L. 2002, p. 652, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

Editor's notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, reenacted this Code section without change.

43-34-173. Requirements for licensure.

(a) Except as otherwise provided in subsection (b) of this Code section, each applicant for a license to practice as a licensed clinical perfusionist shall meet the following requirements:

(1) Be at least 21 years of age;

(2) Submit a completed application required by the board;

(3) Submit any fees required by the board;

(4) Have successfully completed a perfusion education program approved by the board, which program has educational standards at least as stringent as programs approved by the Committee on Allied Health Education and Accreditation (CAHEA) prior to 1994 or the Commission on Accreditation of Allied Health Education Programs (CAAHEP) or its successor;

(5) Pass a competency examination prepared or approved by the board and administered to qualified applicants at least once each calendar year, which examination may be or may include the complete examination given by the American Board of Cardiovascular Perfusion (ABCP) or its successor; and

(6) Have met such other requirements as may be prescribed by the board.

(b) The executive director, with the approval of the chairperson of the board, may in his or her discretion issue a temporary license to an applicant, which license shall have the same force and effect as a permanent license until the next regular meeting of the board at which time the temporary license shall become void. (Code 1981, § 43-34-173, enacted by Ga. L. 2002, p. 652, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, substituted the present provisions of subsection (b) for the former provisions which read: "Notwithstanding the provisions of subsection (a) of this Code section, a person may apply to the board before January 1, 2003, and be granted a license as a licensed clinical perfusionist

upon satisfactory proof that the person was operating cardiopulmonary bypass systems during cardiac surgical cases in a licensed health care facility as the person's primary function for at least six of those eight years immediately preceding the date of application."

43-34-174. License to be property of board; display of license; surrender of license; renewal; expired license.

(a) A license is not the property of the holder but is the property of the board. A license to practice perfusion shall be valid for two years. The board may provide that licenses expire on various dates. A person may renew an unexpired license by submitting proof of compliance with the continuing professional education requirements prescribed by the board and paying the required renewal fee to the board before the expiration date of the license.

(b) The license holder shall:

(1) Display the license in an appropriate and public manner; or

(2) Maintain on file at all times during which the license holder provides services in a health care facility a true and correct copy of

the license certificate in the appropriate records of the facility and keep the board informed of any change of address.

(c) A license issued by the board is the property of the board and shall be surrendered on demand.

(d) Each person licensed under this article shall be responsible for renewing his or her license before the expiration date.

(e) If a person's license has been expired for not more than three months, the person may renew the license by submitting proof, satisfactory to the board, of compliance with the continuing professional education requirements prescribed by the board and any penalty fee prescribed by the board.

(f) If a person's license has been expired for more than three months, the person may not renew the license. The person may obtain a new license by complying with the current requirements and procedures for obtaining a license. (Code 1981, § 43-34-174, enacted by Ga. L. 2002, p. 652, § 1; Ga. L. 2009, p. 859, § 1/HB 509; Ga. L. 2011, p. 779, § 1F/SB 100.)

The 2009 amendment, effective July 1, 2009, in the fourth sentence of subsection (a), inserted "current certification by the American Board of Cardiovascular Perfusion (ABCP) or its successor and"; in subsections (e) and (f), substituted "three months" for "two years"; and, in the first sentence of subsection (g), substituted "re-instate" for "renew" twice.

The 2011 amendment, effective May 13, 2011, in subsection (a), in the second sentence, substituted "shall be valid" for "is valid", and in the third sentence, deleted "current certification by the American Board of Cardiovascular Perfusion (ABCP) or its successor and" preceding

"compliance with"; in subsection (b), in the introductory language, substituted "shall" for "must"; in the second sentence of subsection (f), deleted "submitting to reexamination and" preceding "complying with"; and deleted subsection (g), which read: "The board may reinstate without reexamination an expired license of a person who was licensed in this state, moved to another state or states, is currently licensed or certified, and has been in practice in another state or states for two years immediately preceding the person's application to reinstate a license. The person shall pay the required fee as established by the board."

43-34-175. Issuance of provisional licensed clinical perfusionist license; supervision of licensee; renewal; revocation.

(a) A license as a provisional licensed clinical perfusionist may be issued by the board to a person who submits to the board evidence of having successfully completed an approved perfusion education program required for licensure under Code Section 43-34-173 and upon the filing of an application and payment of the application fee.

(b) A provisional licensed clinical perfusionist shall be under the supervision and direction of a licensed clinical perfusionist at all times during which the provisional licensed clinical perfusionist performs perfusion. The board may promulgate rules governing such supervision

and direction but shall not require the immediate physical presence of the supervising licensed clinical perfusionist.

(c) A provisional license shall be valid for two years from the date it is issued and may not be renewed. The provisional licensee must comply with all of the requirements for licensure under Code Section 43-34-173 prior to the expiration of the two-year provisional license period. A provisional licensee may submit an application for licensure as a licensed clinical perfusionist once he or she has complied with all of the requirements for licensure under Code Section 43-34-173.

(d) If a person fails to meet the requirements for licensure under Code Section 43-34-173 on or before the expiration of the two-year provisional license period, such person's provisional license shall be automatically revoked and surrendered to the board. (Code 1981, § 43-34-175, enacted by Ga. L. 2002, p. 652, § 1; Ga. L. 2004, p. 581, § 3; Ga. L. 2009, p. 859, § 1/HB 509.)

Editor's notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, reenacted this Code section without change.

43-34-176. Requirements for waiver of examination and educational requirements.

On receipt of an application and application fee, the board may waive the examination and educational requirements for an applicant who at the time of application:

(1) Is appropriately licensed or certified in another state, territory, or possession whose requirements for the license or certificate are substantially equal to the requirements of this article; or

(2) Holds a current certificate as a certified clinical perfusionist issued by the American Board of Cardiovascular Perfusion (ABCP) or its successor. (Code 1981, § 43-34-176, enacted by Ga. L. 2002, p. 652, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

Editor's notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, reenacted this Code section without change.

43-34-177. Engaging in practice of perfusion without license; titles; violation a misdemeanor.

(a) A person may not engage or offer to engage in perfusion or use the title or represent or imply that the person has the title of "licensed clinical perfusionist" or "provisional licensed clinical perfusionist" or use the letters "L.C.P." or "P.L.C.P." and may not use any facsimile of such titles in any manner to indicate or imply that the person is a

licensed clinical perfusionist or provisional licensed clinical perfusionist unless the person holds an appropriate license issued pursuant to this article or is exempted under the provisions of Code Section 43-34-178.

(b) A person may not use the title or represent or imply that such person has the title “certified clinical perfusionist” or use the letters “C.C.P.” and may not use any facsimile of such title in any manner to indicate or imply that such person is a certified clinical perfusionist certified by the American Board of Cardiovascular Perfusion (ABCP) unless the person holds a certificate as a certified clinical perfusionist issued by the American Board of Cardiovascular Perfusion (ABCP).

(c) Any person who violates the provisions of subsection (a) or (b) of this Code section shall be guilty of a misdemeanor. (Code 1981, § 43-34-177, enacted by Ga. L. 2002, p. 652, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, inserted “certified” in the middle of subsection (b).

to Code Section 28-9-5, in 2002, “L.C.P.” or “P.L.C.P.” was substituted for “LCP” or “PLCP” in subsection (a), and substituted “C.C.P.” for “CCP” in subsection (b).

Code Commission notes. — Pursuant

43-34-178. Nonapplicability of Code Section 43-34-177; violation.

(a) The provisions of Code Section 43-34-177 shall not apply to:

(1) A person licensed as a physician pursuant to Article 2 of this chapter;

(2) A person licensed under this title as a registered professional nurse or a licensed physician assistant or certified as a respiratory care professional under this title if:

(A) The person does not represent to the public, directly or indirectly, that the person is licensed pursuant to this article and does not use any name, title, or designation indicating that he or she is licensed pursuant to this article; and

(B) The person limits his or her acts or practice to the scope of practice authorized by the appropriate licensing agency;

(3) Any person performing autotransfusion who possesses appropriate training and practices within the guidelines of the American Association of Blood Banks under the supervision of a perfusionist licensed under this article or a physician licensed under Article 2 of this chapter;

(4) A student enrolled in an accredited perfusion education program if the perfusion services performed are:

(A) An integral part of the student’s course of study; and

(B) Performed under the direct supervision of a licensed clinical perfusionist who is assigned to supervise the student and is on duty and immediately available in the assigned patient care area;

(5) The practice of any legally qualified perfusionist employed by the United States government while in the discharge of his or her official duties; or

(6) A person working as a dialysis care technician in an end stage renal disease facility licensed pursuant to Chapter 44 of Title 31 or a licensed hospital.

(b) Any person violating subsection (a) of this Code section shall be guilty of a felony. (Code 1981, § 43-34-178, enacted by Ga. L. 2002, p. 652, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, in subsection (a), substituted “physician” for “physician’s” in paragraph (a)(2), and inserted “Article 2 of” near the end of paragraph (a)(3); and, in subsection (b), deleted “the prohibition of” preceding “subsection (a)” in the middle.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, a semicolon was substituted for a period following paragraph (a)(3).

43-34-179. Sanctions by board.

The board, in consultation with the advisory committee, may impose on a licensed clinical perfusionist or a provisional licensed clinical perfusionist any sanction authorized under subsection (b) of Code Section 43-34-8 upon a finding of any conduct specified in subsection (a) of Code Section 43-34-8. (Code 1981, § 43-34-179, enacted by Ga. L. 2002, p. 652, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, rewrote this Code section.

43-34-180. Advisory committee.

The board shall appoint an advisory committee. The advisory committee shall include clinical perfusionists licensed under this article and such members as the board in its discretion may determine. Members shall receive no compensation for service on the committee. The committee shall have such advisory duties and responsibilities as the board may determine. Advisory committee members must be licensed pursuant to this article. (Code 1981, § 43-34-180, enacted by Ga. L. 2002, p. 652, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, substituted “include” for “be representative of a cross section of the cultural backgrounds of the” in the second sentence; deleted the former fifth sentence which read: “The initial members of the

advisory committee may include persons eligible for licensing under this article.”; and substituted “Advisory” for “Subse-

quent advisory” at the beginning of the last sentence.

ARTICLE 8

ORTHOTICS AND PROSTHETICS PRACTICE

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, Article 7 of this chapter as enacted by Ga. L. 2002, p. 1273, § 1, was redesignated as Article 8 of this chapter.

Administrative rules and regula-

tions. — Orthotists and prosthetists, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Composite Medical Board, Chapter 360-31.

43-34-190. Short title.

This article shall be known and may be cited as the “Orthotics and Prosthetics Practice Act.” (Code 1981, § 43-34-190, enacted by Ga. L. 2002, p. 1273, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, Code Section 43-34-60, as enacted by Ga. L. 2002, p. 1273, § 1, was redesignated as Code Section 43-34-190.

Editor’s notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, reenacted this Code section without change.

43-34-191. Findings of General Assembly.

The General Assembly finds that the practice of orthotics and prosthetics in this state is an allied health profession recognized by the American Medical Association, with educational standards established by the Commission on Accreditation of Allied Health Education Programs. The increasing population of elderly and physically challenged individuals who need orthotic and prosthetic services requires that the orthotic and prosthetic professions be regulated to ensure the provision of high-quality services and devices. The people of this state deserve the best care available and will benefit from the assurance of initial and ongoing professional competence of the orthotists and prosthetists practicing in this state. The practice of orthotics and prosthetics serves to improve and enhance the lives of individuals with disabilities by enabling them to resume productive lives following serious illness, injury, or trauma. Unregulated dispensing of orthotic and prosthetic care does not adequately meet the needs or serve the interests of the public. In keeping with requirements imposed on similar health disciplines, licensure of the orthotic and prosthetic professions will help ensure the health and safety of consumers, as well as maximize their functional abilities and productivity levels. This article shall be liberally construed to best carry out these subjects and purposes. (Code

1981, § 43-34-191, enacted by Ga. L. 2002, p. 1273, § 1; Ga. L. 2009, p. 859, § 1/ HB 509.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, Code Section 43-34-61, as enacted by Ga. L. 2002, p. 1273, § 1, was redesignated as Code Section 43-34-191.

Editor's notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, reenacted this Code section without change.

43-34-192. Definitions.

As used in this article, the term:

(1) “Assistant” means a person who assists an orthotist, prosthetist, or prosthetist orthotist with patient care services and fabrication of orthoses or prostheses under the supervision of a licensed orthotist or prosthetist.

(2) “Board” means the Georgia Composite Medical Board.

(3) “Custom fabricated and fitted device” means that an orthosis or prosthesis is fabricated to original measurements or a mold, or both, for use by a patient in accordance with a prescription and which requires substantial clinical and technical judgment in its design and fitting.

(4) “Custom fitted device” means a prefabricated orthosis or prosthesis sized or modified, or both, for use by a patient in accordance with a prescription and which requires substantial clinical judgment and substantive alteration for appropriate use.

(5) “Facility” means the business location where orthotic or prosthetic care is provided and which has the appropriate clinical and laboratory space and equipment to provide comprehensive orthotic or prosthetic care. Licensed orthotists and prosthetists must be available to either provide care or supervise the provision of care by nonlicensed staff.

(6) “Level of competence” means a hierarchical position that an individual occupies within a field or profession relative to other practitioners in the profession.

(7) “Licensed orthotist” means a person licensed under this article to practice orthotics and who represents himself or herself to the public by title and description of services that includes the term “orthotic,” “orthotist,” “brace,” or a similar title or description of services.

(8) “Licensed physician” means a person licensed to practice medicine under Article 2 of this chapter.

(9) "Licensed podiatrist" means a person licensed to practice podiatry under Chapter 35 of this title, the "Georgia Podiatry Practice Act."

(10) "Licensed prosthetist" means a person licensed under this article to practice prosthetics and who represents himself or herself to the public by title and description of services that includes the term "prosthetic," "prosthetist," "artificial limb," or a similar title or description of services.

(11) "Off-the-shelf device" means a prefabricated prosthesis or orthosis sized or modified, or both, for use by a patient in accordance with a prescription and which does not require substantial clinical judgment and substantive alteration for appropriate use.

(12) "Orthosis" means a custom designed, fabricated, fitted, modified, or fitted and modified device to correct, support, or compensate for a neuromusculoskeletal disorder or acquired condition. Orthosis does not include fabric or elastic supports, corsets, arch supports, low-temperature plastic splints, trusses, elastic hoses, canes, crutches, soft cervical collars, dental appliances, or other similar devices that are carried in stock and sold as over-the-counter items by a drug store, department store, corset shop, or surgical supply facility.

(13) "Orthotic and prosthetic education program" means a course of instruction accredited by the Commission on Accreditation of Allied Health Education Programs consisting of:

(A) A basic curriculum of college level instruction in math, physics, biology, chemistry, and psychology; and

(B) A specific curriculum in orthotic or prosthetic courses, including:

(i) Lectures covering pertinent anatomy, biomechanics, pathomechanics, prosthetic or orthotic components and materials, training and functional capabilities, prosthetic or orthotic performance evaluation, prescription considerations, etiology of amputations and disease processes necessitating prosthetic or orthotic use, and medical management;

(ii) Subject matter related to pediatric and geriatric problems;

(iii) Instruction in acute care techniques, such as immediate and early postsurgical prosthetics and fracture bracing techniques; and

(iv) Lectures, demonstrations, and laboratory experiences related to the entire process of measuring, casting, fitting, fabricating, aligning, and completing prostheses or orthoses.

(14) "Orthotic and prosthetic scope of practice" means a list that includes the role played by an occupant of a particular level of competence, what he or she can be expected to do and not to do, and his or her relation to others in the field. These should be based on nationally accepted standards of orthotic and prosthetic certifying agencies with accreditation by the National Commission for Certifying Agencies.

(15) "Orthotics" means the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing an orthosis under an order from a licensed physician or podiatrist for the correction or alleviation of neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity.

(16) "Orthotist" means an allied health professional who is specifically trained and educated to provide or manage the provision of a custom designed, fabricated, or modified and fitted external orthosis to an orthotic patient based on a clinical assessment and a physician's or podiatrist's prescription to restore physiological function or cosmesis or both and who represents himself or herself to the public by such title as providing orthotic services.

(17) "Over-the-counter device" means a prefabricated, mass produced device that is prepackaged and requires no professional advice or judgment in either size selection or use and includes fabric or elastic supports, corsets, generic arch supports, and elastic hoses.

(18) "Person" means a natural person.

(19) "Prosthesis" means a custom designed, fabricated, fitted, modified, or fitted and modified device to replace an absent external limb for purposes of restoring physiological function or cosmesis or both. Prosthesis does not include artificial eyes, ears, fingers, or toes; dental appliances; cosmetic devices such as artificial breasts, eyelashes, or wigs; or other devices that do not have a significant impact on the musculoskeletal functions of the body.

(20) "Prosthetics" means the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a prosthesis under an order from a licensed physician or podiatrist.

(21) "Prosthetist" means an allied health professional who is specifically trained and educated to provide or manage the provision of a custom designed, fabricated, modified, and fitted external limb prosthesis to a prosthetic patient based on a clinical assessment and a physician's or podiatrist's prescription to restore physiological function or cosmesis or both and who represents himself or herself to the public by such title as providing prosthetic services.

(22) "Prosthetist orthotist" means a person who practices both disciplines of prosthetics and orthotics and who represents himself or herself to the public by such title as providing prosthetic and orthotic services.

(23) "Resident" means a person who has completed an education program in either orthotics or prosthetics and is continuing his or her clinical education in a residency accredited by the National Commission on Orthotic and Prosthetic Education.

(24) "Technician" means a person who assists an orthotist, prosthetist, or prosthetist orthotist with fabrication of orthoses or prostheses but does not provide direct patient care. (Code 1981, § 43-34-192, enacted by Ga. L. 2002, p. 1273, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, substituted "Georgia Composite Medical Board" for "Composite Board of State Medical Examiners created by Code Section 43-34-21" in paragraph (2) and deleted a comma in paragraph (21).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, Code Section 43-34-62, as enacted by Ga. L. 2002, p. 1273, § 1, was redesignated as Code Section 43-34-192; in paragraph (5),

"which" was inserted in the first sentence; in paragraph (7), "orthotic," "orthotist," and "brace," were substituted for "'orthotic,'" "'orthotist,'" and "'brace,'""; in paragraph (16), a comma was deleted following "prescription" and "who" was inserted preceding "represents"; in paragraph (17), a misspelling of "includes" was corrected; in paragraph (19), punctuation was revised; and, in paragraph (21), "who" was inserted preceding "represents".

43-34-193. Construction of article.

This article shall not be construed to prohibit:

(1) A licensed physician from engaging in the practice for which he or she is licensed;

(2) A person licensed in this state under any other law from engaging in the practice for which he or she is licensed;

(3) The practice of orthotics or prosthetics by a person who is employed by the federal government or any bureau, division, or agency of the federal government while in the discharge of the employee's official duties;

(4) The practice of orthotics or prosthetics by:

(A) A student enrolled in a school of orthotics or prosthetics; or

(B) A resident continuing his or her clinical education in a residency accredited by the National Commission on Orthotic and Prosthetic Education;

(5) The practice of orthotics or prosthetics by a person who is an orthotist or prosthetist licensed under the laws of another state or

territory of the United States or another country and has applied in writing to the board, in a form and substance satisfactory to the board, for a license as an orthotist or prosthetist and who is qualified to receive the license until:

- (A) The expiration of six months after the filing of the written application;
- (B) The withdrawal of the application; or
- (C) The denial of the application by the board;
- (6) A person licensed by this state as a physical therapist or occupational therapist from engaging in his or her profession;
- (7) A licensed podiatrist from engaging in his or her profession;
- (8) A licensed athletic trainer from engaging in his or her profession;
- (9) A registered pharmacist from engaging in the practice for which he or she is registered;
- (10) Any person licensed, certified, or permitted under any other article of this chapter from engaging in the practice for which he or she is licensed, certified, or permitted;
- (11) The measuring, molding, or fitting of knee braces by any person;
- (12) Employees or authorized representatives of an orthotic manufacturer from engaging in one or more of the following: evaluating, adjusting, measuring, designing, fabricating, assembling, fitting, servicing, training, repairing, replacing, or delivering an orthotic device under the order, direction, or prescription of a physician or health provider operating within his or her licensed scope of practice and meeting the criteria of the Part II Policy and Procedures for Orthotics and Prosthetics Services pursuant to Title XIX of the federal Social Security Act, as amended; or
- (13) A board certified pedorthist from manufacturing, fabricating, dispensing, or any combination thereof custom foot orthotics or foot or ankle gauntlets. (Code 1981, § 43-34-193, enacted by Ga. L. 2002, p. 1273, § 1; Ga. L. 2005, p. 526, § 2/HB 608; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, inserted “, certified, or permitted” twice in paragraph (10).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, Code

Section 43-34-63, as enacted by Ga. L. 2002, p. 1273, § 1, was redesignated as Code Section 43-34-193 and “for” was substituted for “by” in paragraph (9).

43-34-194. Application for original license.

An application for an original license shall be made to the board on a form prescribed thereby and shall be accompanied by the required fee, which shall not be refundable. An application shall require information that in the judgment of the board will enable it to determine the qualifications of the applicant for a license. (Code 1981, § 43-34-194, enacted by Ga. L. 2002, p. 1273, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, Code Section 43-34-64, as enacted by Ga. L. 2002, p. 1273, § 1, was redesignated as Code Section 43-34-194.

Editor's notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, reenacted this Code section without change.

43-34-195. Qualifications for license.

(a) To qualify for a license to practice orthotics or prosthetics, a person shall:

(1)(A) Possess a baccalaureate degree from a college or university;

(B) Have completed the amount of formal training, including, but not limited to, any hours of classroom education and clinical practice, established and approved by the board; and

(C) Complete a clinical residency in the professional area for which a license is sought in accordance with standards, guidelines, or procedures for residencies inside or outside this state established and approved by the board. The majority of training must be devoted to services performed in the discipline for which the license will be sought and under the supervision of a practitioner licensed in orthotics or prosthetics or a person certified as an orthotist, prosthetist, or prosthetist orthotist, provided that the certification was obtained before the date this article becomes effective; or

(2)(A) Possess an associate's degree from a college or university with specific courses of study in human anatomy, physiology, physics, chemistry, and biology; and

(B) Have completed at least five years of continued work experience performed in the discipline for which the license will be sought under the supervision of a practitioner licensed in such discipline or certified in such discipline by an agency accredited by the National Commission for Certifying Agencies;

(3) Pass all written, practical, and oral examinations that are required and approved by the board;

(4) Be qualified to practice in accordance with nationally accepted standards of orthotic and prosthetic care; and

(5) Have met such other requirements as may be prescribed by the board.

(b) The standards and requirements for licensure established by the board shall be substantially equal to or in excess of standards commonly accepted in the profession of orthotics or prosthetics. The board shall adopt rules as necessary to set the standards and requirements.

(c) A person may be licensed in more than one discipline. (Code 1981, § 43-34-195, enacted by Ga. L. 2002, p. 1273, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, Code Section 43-34-65, as enacted by Ga. L. 2002, p. 1273, § 1, was redesignated as Code Section 43-34-195; a comma was inserted following “practice” in subparagraph (a)(1)(B), “orthotist, provided that” was substituted for “orthotist provided” in

the last sentence of subparagraph (a)(1)(C); and, in subparagraph (a)(2)(A), “associate’s” was substituted for “associates” and “and” was inserted preceding “biology” near the end.

Editor’s notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, reenacted this Code section without change.

43-34-196. Sanctions authorized.

The board, in consultation with the advisory committee, may impose on a licensed orthotist or prosthetist any sanction authorized under subsection (b) of Code Section 43-34-8 upon a finding of any conduct specified in subsection (a) of Code Section 43-34-8. (Code 1981, § 43-34-196, enacted by Ga. L. 2002, p. 1273, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, rewrote this Code section.

Section 43-34-66, as enacted by Ga. L. 2002, p. 1273, § 1, was redesignated as Code Section 43-34-196.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, Code

43-34-197. Supervision of assistants and technicians.

(a) No person shall work as an assistant to an orthotist, prosthetist, or prosthetist orthotist and provide patient care services or fabrication of orthoses or prostheses unless he or she is doing the work under the supervision of a licensed orthotist, prosthetist, or prosthetist orthotist.

(b) No person shall work as a technician unless the work is performed under the supervision of a person licensed under this article. (Code 1981, § 43-34-197, enacted by Ga. L. 2002, p. 1273, § 1; Ga. L. 2005, p. 526, § 3/HB 608; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, in subsection (b), substituted “supervision” for “direction” in the middle and

deleted “, which shall not require direct supervision” following “article” at the end.

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 2002, Code 2002, p. 1273, § 1, was redesignated as Section 43-34-67, as enacted by Ga. L. Code Section 43-34-197.

43-34-198. Application for license for persons currently practicing orthotics or prosthetics.

(a) Until July 1, 2007, a person certified as an orthotist, prosthetist, or prosthetist orthotist by the American Board for Certification in Orthotics and Prosthetics, Incorporated or the Board of Orthotist/Prosthetist Certification, or holding similar certifications from other accrediting bodies with equivalent educational requirements and examination standards, may apply for and may be granted orthotic or prosthetic licensure under this article upon payment of the required fee. After that date, any applicant for licensure as an orthotist or a prosthetist shall meet the requirements of subsection (a) of Code Section 43-34-195.

(b) On and after July 1, 2007, no person shall practice orthotics or prosthetics in this state and hold himself or herself out as being able to practice such professions unless he or she is licensed in accordance with this article or is exempt from such licensing. A person who violates this subsection shall, upon conviction thereof, be guilty of a misdemeanor. (Code 1981, § 43-34-198, enacted by Ga. L. 2002, p. 1273, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, deleted former subsection (c).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, Code Section 43-34-68, as enacted by Ga. L. 2002, p. 1273, § 1, was redesignated as Code Section 43-34-198; in subsection (a), a misspelling of “Orthotist/Prosthetist” was corrected and capitalization and

punctuation was revised and “Code Section 43-34-195” was substituted for “Code Section 43-34-65” at the end of the last sentence in subsection (a).

Pursuant to Code Section 28-9-5, in 2005, “July 1, 2007” was substituted for “one year after the date this article becomes effective” in the first sentences of subsections (a) and (b).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Offense arising under O.C.G.A. § 43-34-198(b) does not require fingerprinting. 2002 Op. Att’y Gen. No. 2002-7.

43-34-199. Order from licensed physician or podiatrist required.

A licensed orthotist may provide care or services only if the care or services are provided pursuant to an order from a licensed physician or podiatrist. A licensed prosthetist may provide care or services only if the care or services are provided pursuant to an order from a licensed physician or podiatrist. (Code 1981, § 43-34-199, enacted by Ga. L. 2002, p. 1273, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, Code Section 43-34-69, as enacted by Ga. L. 2002, p. 1273, § 1, was redesignated as Code Section 43-34-199.

Editor's notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, reenacted this Code section without change.

43-34-200. Expiration date and renewal period; continuing education; procedure for restoration.

(a) The expiration date and renewal period for each license issued under this article shall be set by the board. A license shall be valid for a period of up to two years and shall be renewed biennially as provided by rule of the board. The board shall establish continuing education requirements for the renewal of a license. These requirements shall be based on established standards of competence in the field of orthotics or prosthetics.

(b) A person who has permitted his or her license to expire or who has had his or her license on inactive status may have his or her license restored by:

(1) Making application to the board;

(2) Filing proof acceptable to the board of his or her fitness to have his or her license restored including, but not limited to, sworn evidence certifying to active practice in another jurisdiction satisfactory to the board; and

(3) Paying the required restoration fee.

If the person has not maintained an active practice in another jurisdiction satisfactory to the board, the board shall determine, by an evaluation program established by rule, such person's fitness to resume active status and may require the person to complete a period of evaluated clinical experience and successful completion of an examination.

(c) A person whose license expired while he or she was:

(1) In federal service on active duty within the armed forces of the United States or with the state militia and called into service or training; or

(2) In training or education under the supervision of the United States preliminary to induction into military service

may have his or her license renewed or restored without paying a lapsed renewal fee if, within two years after termination from the service, training, or education except under conditions other than honorable, he or she furnishes the board with satisfactory evidence that he or she has been so engaged and that his or her service, training, or

education has been terminated. (Code 1981, § 43-34-200, enacted by Ga. L. 2002, p. 1273, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, Code Section 43-34-70, as enacted by Ga. L. 2002, p. 1273, § 1, was redesignated as Code Section 43-34-200; a semicolon was substituted for a comma at the end of paragraph (b)(2) and “furnishes” was sub-

stituted for “furnished” in the undesignated paragraph following paragraph (c)(2).

Editor’s notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, reenacted this Code section without change.

43-34-201. Inactive status.

A person who notifies the board on forms prescribed thereby may elect to place his or her license on an inactive status and shall, subject to rules of the board, be excused from payment of renewal fees until he or she notifies the board of his or her desire to resume active status. A person requesting restoration from inactive status shall be required to pay the current renewal fee and shall be required to restore his or her license as provided in Code Section 43-34-200. An orthotist or prosthetist whose license is on inactive status shall not practice orthotics or prosthetics in this state. (Code 1981, § 43-34-201, enacted by Ga. L. 2002, p. 1273, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, Code Section 43-34-71, as enacted by Ga. L. 2002, p. 1273, § 1, was redesignated as Code Section 43-34-201 and “Code Section 43-34-200” was substituted for “Code Sec-

tion 43-34-70” at the end of the second sentence.

Editor’s notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, reenacted this Code section without change.

43-34-202. Reciprocal licensure requirements.

The board may, at its discretion, license as an orthotist or prosthetist, without examination and on payment of the required fee, an applicant who is an orthotist or prosthetist and is:

(1) Licensed under the laws of another state, territory, or country, if the requirements for licensure in that state, territory, or country in which the applicant is licensed were, at the date of his or her licensure, equal to or more stringent than the requirements in force in this state on that date; or

(2) Certified as an orthotist or prosthetist by a national certifying organization that is accredited by the National Commission for Certifying Agencies and has educational and testing standards equal to or more stringent than the licensing requirements of this state. (Code 1981, § 43-34-202, enacted by Ga. L. 2002, p. 1273, § 1; Ga. L. 2009, p. 859, § 1/HB 509.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, Code Section 43-34-72, as enacted by Ga. L. 2002, p. 1273, § 1, was redesignated as Code Section 43-34-202.

Editor’s notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, reenacted this Code section without change.

43-34-203. Advisory committee.

The board shall appoint the advisory committee. The advisory committee shall include licensed orthotists and prosthetists licensed under this article and such members as the board in its discretion may determine. Members shall receive no compensation for service on the committee. The committee shall have such advisory duties and responsibilities as the board may determine. The initial members of the advisory committee may include persons eligible for licensing under this article. Subsequent advisory committee members must be licensed pursuant to this article. (Code 1981, § 43-34-204, enacted by Ga. L. 2002, p. 1273, § 1; Code 1981, § 43-34-203, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 43-34-204 as present Code Section 43-34-203; and substituted “include” for “be representative of a cross section of the cultural backgrounds of the” in the middle of the second sentence.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, Code Section 43-34-74, as enacted by Ga. L.

2002, p. 1273, § 1, was redesignated as Code Section 43-34-204.

Editor’s notes. — Former Code Section 43-34-203, concerning disciplinary actions by the board, was based on Code 1981, § 43-34-203, enacted by Ga. L. 2002, p. 1273, § 1 and was repealed by Ga. L. 2009, p. 859, § 1, effective July 1, 2009.

43-34-204. Redesignated.

Editor’s notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated

former Code Section 43-34-204 as present Code Section 43-34-203.

ARTICLE 9

COSMETIC LASER SERVICES

Delayed effective date. — Ga. L. 2007, p. 626, § 2, provides that this article, as amended by Ga. L. 2009, p. 859, § 1, and Ga. L. 2009, p. 989, §§ 1-6, becomes effective only when funds are specifically appropriated for purposes of this Act in a General Appropriations Act

making specific reference to this Act and shall become effective when funds so appropriated become available for expenditure. Funds were not appropriated at the 2007, 2008, 2009, 2010, or 2011 session of the General Assembly.

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §§ 138, 247.

Am. Jur. Proof of Facts. — Plastic Surgeon's Liability in Cosmetic Surgery Cases, 22 POF2d 721.

ALR. — Liability of physician or hospital in the performance of cosmetic surgery upon the face, 54 ALR3d 1255.

Malpractice in treatment of skin disease, disorder, blemish, or scar, 19 ALR5th 563.

43-34-240. (For effective date, see note.) Short title.

This article shall be known and may be cited as the "Georgia Cosmetic Laser Services Act." (Code 1981, § 43-34-240, enacted by Ga. L. 2007, p. 626, § 1/HB 528; Ga. L. 2009, p. 859, § 1/HB 509.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

Ga. L. 2009, p. 859, § 1, effective when

funds are specifically appropriated for the purposes of Ga. L. 2007, p. 626, reenacted this Code section without change. Funds were not appropriated at the 2009, 2010, or 2011 session of the General Assembly.

43-34-241. (For effective date, see note.) Legislative findings; purpose.

This article is enacted for the purpose of safeguarding the public health, safety, and welfare by providing for state administrative control, supervision, and regulation of the practice of providing cosmetic laser services. It is the intention of the General Assembly that cosmetic laser services be made available and affordable to the people of this state in a safe, reliable manner. Unregulated cosmetic laser services do not adequately meet the needs or serve the interests of the public. Licensure of those performing cosmetic laser services and required education and training of such practitioners will help ensure the health and safety of consumers. The practice of providing cosmetic laser services is declared to be affected with the public interest; and this article shall be liberally construed so as to accomplish the purpose stated in this Code section. (Code 1981, § 43-34-241, enacted by Ga. L. 2007, p. 626, § 1/HB 528; Ga. L. 2009, p. 859, § 1/HB 509.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

Ga. L. 2009, p. 859, § 1, effective when

funds are specifically appropriated for the purposes of Ga. L. 2007, p. 626, reenacted this Code section without change. Funds were not appropriated at the 2009, 2010, or 2011 session of the General Assembly.

43-34-242. (For effective date, see note.) Definitions.

As used in this article, the term:

(1) "Board" means the Georgia Composite Medical Board created by Code Section 43-34-2.

(2) "Consulting physician" means a person licensed to practice medicine under Article 2 of this chapter and:

(A) Whose principal place of practice is within this state; or

(B) Whose principal place of practice is outside this state but is within 50 miles from the facility with whom he or she has an agreement to provide services in accordance with Code Section 43-34-248.

(3) "Consumer" means a person on whom cosmetic laser services are or are to be performed.

(4) "Cosmetic laser practitioner" means a person licensed under this article to provide cosmetic laser services as defined in this article and whose license is in good standing.

(5) "Cosmetic laser services" means nonablative elective cosmetic light based skin care, photo rejuvenation, or hair removal using lasers or pulsed light devices approved by the United States Food and Drug Administration for noninvasive procedures. Such services and the provision thereof shall not be considered to be the practice of medicine.

(6) "Facility" means any location, place, area, structure, office, institution, or business or a part thereof in which is performed or provided cosmetic laser services regardless of whether a fee is charged for such services.

(7) "License" means a valid and current certificate of registration issued by the board which shall give the person to whom it is issued authority to engage in the practice prescribed thereon.

(8) "Licensee" means any person holding a license under this article.

(9) "Medical practitioner" means a registered professional nurse, nurse practitioner, physician assistant, or physician.

(10) "Nurse" means a registered professional nurse or nurse practitioner.

(11) "Person" means a natural person. (Code 1981, § 43-34-242, enacted by Ga. L. 2007, p. 626, § 1/HB 528; Ga. L. 2009, p. 859, § 1/HB 509; Ga. L. 2009, p. 989, § 1/SB 104.)

Delayed effective date. — Ga. L. 2009, p. 859, § 17, provides that the 2009 amendment becomes effective when funds are specifically appropriated for the purposes of Ga. L. 2007, p. 626. Funds were not appropriated at the 2009, 2010, or 2011 session of the General Assembly. Ga. L. 2009, p. 989, § 7, provides that

the 2009 amendment becomes effective only if and when the Georgia Cosmetic Laser Services Act becomes effective. For additional information, see the delayed effective date note at the beginning of this article.

The 2009 amendments. — The first 2009 amendment substituted “Georgia Composite Medical Board created by Code Section 43-34-2” for “Composite State Board of Medical Examiners created by Code Section 43-34-21” in paragraph (1) and substituted “physician” for “physician’s” in paragraph (9). The second 2009 amendment, in paragraph (2), inserted

“Article 2 of”; in the first sentence of paragraph (5), inserted “care” near the middle and substituted “or” for “and”; in paragraph (9), deleted “licensed practical nurse,” following “professional nurse”; and, in paragraph (10), deleted “, licensed practical nurse,” following “professional nurse”. For effective date of these amendments, see the delayed effective date notes.

Editor’s notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

43-34-243. (For effective date, see note.) Permitted activities.

This article shall not be construed to prohibit:

(1) A licensed physician from engaging in the practice for which he or she is licensed;

(2) A licensed physician assistant from engaging in the practice for which he or she is licensed;

(3) A person licensed by this state as a registered professional nurse, licensed practical nurse, or nurse practitioner from engaging in his or her profession;

(4) A licensed esthetician from engaging in his or her profession;

(5) A master cosmetologist from engaging in his or her profession;

(6) Any person licensed under any other article of this chapter from engaging in the practice for which he or she is licensed;

(7) A person licensed in this state under any other law from engaging in the practice for which he or she is licensed;

(8) The practice of providing cosmetic laser services by a person who is employed by the federal government or any bureau, division, or agency of the federal government while in the discharge of the employee’s official duties;

(9) The practice of providing cosmetic laser services by a student enrolled in an accredited school of nursing or medical school as part of his or her training; or

(10) Employees or authorized representatives of a manufacturer of a laser used for cosmetic laser services from engaging in one or more of the following: evaluating, adjusting, measuring, designing, fabricating, assembling, fitting, servicing, training, repairing, replacing, or delivering a laser used to provide cosmetic laser services under the

order, direction, or prescription of a physician or health provider operating within his or her licensed scope of practice. (Code 1981, § 43-34-243, enacted by Ga. L. 2007, p. 626, § 1/HB 528; Ga. L. 2009, p. 859, § 1/HB 509.)

Delayed effective date. — Ga. L. 2009, p. 859, § 17, provides that the 2009 amendment becomes effective when funds are specifically appropriated for the purposes of Ga. L. 2007, p. 626. Funds were not appropriated at the 2009, 2010, or 2011 session of the General Assembly.

The 2009 amendment substituted

“physician” for “physician’s” in paragraph (2). For effective date of this amendment, see the delayed-effective date note.

Editor’s notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

43-34-244. (For effective date, see note.) Two levels of license; application.

(a) There shall be two levels of a license for a cosmetic laser practitioner: assistant laser practitioner and senior laser practitioner.

(b) Any person desiring to obtain a license as a cosmetic laser practitioner under the terms of this article shall make application to the board as follows:

(1) An applicant for an “assistant laser practitioner” license shall present proof that he or she:

(A) Holds a current valid license or certificate of registration as a physician assistant, licensed practical nurse, nurse, esthetician, or master cosmetologist, or has previously held a license or certificate of registration as a medical practitioner; and

(B) Has received at least three laser certificates from attending laser/intense pulsed light (IPL) courses as approved by the board, directly taught by a licensed physician or certified continuing medical education or continuing education educator.

If, after review of the application, it is determined that the applicant is at least 21 years of age; has met the minimum educational requirements; is of good moral character; and is possessed of the requisite skill to perform properly cosmetic laser services, a license shall be issued to the applicant entitling the applicant to practice the occupation of cosmetic laser practitioner at the assistant laser practitioner level under the on-site supervision of a senior laser practitioner.

(2) An applicant for a “senior laser practitioner” license shall present proof that he or she:

(A) Holds a current valid license or certificate of registration as a physician assistant or nurse or has previously held a license or certificate of registration as a medical practitioner;

(B) Has at least three years of clinical or technological medical experience, or both;

(C) Has been or was licensed or nationally board certified as a medical practitioner for at least three years; and

(D) Has received at least two laser certificates from attending laser/intense pulsed light (IPL) continuing medical education courses as approved by the board, directly taught by a licensed physician or certified continuing medical education or continuing education educator.

If, after review of the application, it is determined that the applicant is at least 21 years of age; has met the minimum educational and clinical training requirements to perform cosmetic laser services with indirect supervision; is of good moral character; and is possessed of the requisite skill to perform properly these services, a license shall be issued to the applicant entitling the applicant to practice the occupation of cosmetic laser practitioner at the senior laser practitioner level pursuant to the protocols of a consulting physician.

(c) Any person desiring to obtain a license as an "assistant laser practitioner" who does not meet the requirements of paragraph (1) of subsection (b) of this Code section shall also be eligible for a license as an "assistant laser practitioner" if he or she makes application to the board within nine months of the effective date of this article and presents proof that he or she:

(1) Prior to the effective date of this article, obtained a minimum of 2,000 hours of experience in administering cosmetic laser service; and

(2) Has received at least two laser certificates from attending laser/intense pulsed light (IPL) courses, directly taught by a licensed physician or certified continuing medical education or continuing education educator.

(d) Should an applicant have a current cosmetic laser practitioner license or certificate of registration in force from another state, country, territory of the United States, or the District of Columbia, where similar reciprocity is extended to this state and licensure requirements are substantially equal to those in this state, and have paid a fee and have submitted an application, the applicant may be issued a license at the appropriate level entitling him or her to practice the occupation of a cosmetic laser practitioner at that level, unless the board, in its discretion, sees fit to require a written or a practical examination subject to the terms and provisions of this article. (Code 1981, § 43-34-244, enacted by Ga. L. 2007, p. 626, § 1/HB 528; Ga. L. 2009, p. 859, § 1/HB 509; Ga. L. 2009, p. 989, § 2/SB 104; Ga. L. 2010, p. 878, § 43/HB 1387.)

Delayed effective date. — Ga. L. 2009, p. 859, § 17, provides that the 2009 amendment becomes effective when funds are specifically appropriated for the purposes of Ga. L. 2007, p. 626. Funds were not appropriated at the 2009, 2010, or 2011 session of the General Assembly.

Ga. L. 2009, p. 989, § 7, provides that the 2009 amendment becomes effective only if and when the Georgia Cosmetic Laser Services Act becomes effective. For additional information, see the delayed effective date note at the beginning of this article.

Ga. L. 2010, p. 878, § 55, provides that the 2010 amendment becomes effective only when the Georgia Cosmetic Laser Services Act becomes effective. For additional information, see the delayed effective date note at the beginning of this article.

The 2009 amendments. — The first 2009 amendment substituted “physician” for “physician’s” in subparagraphs (b)(1)(A) and (b)(2)(A). The second 2009 amendment, in subsection (b), in subparagraph (b)(1)(A), inserted “licensed practical nurse,” and substituted “on-site” for “direct” near the end of the undesignated paragraph; substituted the present provisions of subsection (c) for the former provisions which read: “The board shall be

authorized to waive any education requirements under this Code section in cases of hardship, disability, or illness or under such other circumstances as the board deems appropriate with respect to any applicant who has practiced as a cosmetic laser practitioner prior to July 1, 2007.”; and deleted the former last sentence of subsection (d) which read: “The board shall be authorized to waive any education or experience requirements applicable to any person who holds a current license or certificate to practice as a cosmetic laser practitioner outside of this state and who desires to obtain a license at a level authorized under this Code section to practice as a cosmetic laser practitioner in this state in cases of hardship, disability, or illness or under such other circumstances as the board deems appropriate.” For effective date of these amendments, see the delayed effective date notes.

The 2010 amendment, part of an Act to revise, modernize, and correct the Code, deleted “at least” preceding “2,000 hours” in paragraph (c)(1). For effective date of this amendment, see the delayed effective date notes.

Editor’s notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

43-34-245. (For effective date, see note.) Expiration of licenses; license renewal.

(a) All licenses shall expire biennially unless renewed. All applications for renewal of a license shall be filed with the board prior to the expiration date, accompanied by the biennial renewal fee prescribed by the board. A license which has expired for failure of the holder to renew may only be restored after application and payment of the prescribed restoration fee within the time period established by the board and provided the applicant meets such requirements as the board may establish by rule. Any license which has not been restored within such period following its expiration may not be renewed, restored, or reissued thereafter. The holder of such a canceled license may apply for and obtain a valid license only upon compliance with all relevant requirements for issuance of a new license.

(b) As a condition of license renewal, the board shall require licensees to provide proof, in a form approved by the board, of a minimum of five hours of continuing education courses as approved by the board in

the area of cosmetic laser services, equipment safety and operation, procedures, and relative skin modalities, directly taught by a licensed physician or certified continuing medical education or continuing education educator. (Code 1981, § 43-34-245, enacted by Ga. L. 2007, p. 626, § 1/HB 528; Ga. L. 2009, p. 859, § 1/HB 509.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

Ga. L. 2009, p. 859, § 1, effective when

funds are specifically appropriated for the purposes of Ga. L. 2007, p. 626, reenacted this Code section without change. Funds were not appropriated at the 2009, 2010, or 2011 session of the General Assembly.

43-34-246. (For effective date, see note.) Sanctions.

The board may impose on a cosmetic laser practitioner or applicant any sanction authorized under subsection (b) of Code Section 43-34-8 upon a finding of any conduct specified in subsection (a) of Code Section 43-34-8. (Code 1981, § 43-34-246, enacted by Ga. L. 2007, p. 626, § 1/HB 528; Ga. L. 2009, p. 859, § 1/HB 509.)

Delayed effective date. — Ga. L. 2009, p. 859, § 17, provides that the 2009 amendment becomes effective when funds are specifically appropriated for the purposes of Ga. L. 2007, p. 626. Funds were not appropriated at the 2009, 2010, or 2011 session of the General Assembly.

The 2009 amendment rewrote this Code section. For effective date of this amendment, see the delayed effective date note.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, a misspelling of "practitioner" was corrected near the beginning of this Code section.

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

43-34-247. (For effective date, see note.) Petition to restrain or enjoin unlicensed cosmetic laser practitioner.

The practice of providing cosmetic laser services is declared to be an activity affecting the public interest and involving the health, safety, and welfare of the public. Such practice when engaged in by a person who is not licensed as a cosmetic laser practitioner or otherwise licensed to practice a profession which is permitted under law to perform cosmetic laser services is declared to be harmful to the public health, safety, and welfare. The board or the district attorney of the circuit where such unlicensed practice exists, or any person or organization having an interest therein, may bring a petition to restrain and enjoin such unlicensed practice in the superior court of the county where such unlicensed person resides. It shall not be necessary in order to obtain an injunction under this Code section to allege or prove that there is no adequate remedy at law, or to allege or prove any special

injury. (Code 1981, § 43-34-247, enacted by Ga. L. 2007, p. 626, § 1/HB 528; Ga. L. 2009, p. 859, § 1/HB 509.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

Ga. L. 2009, p. 859, § 1, effective when

funds are specifically appropriated for the purposes of Ga. L. 2007, p. 626, reenacted this Code section without change. Funds were not appropriated at the 2009, 2010, or 2011 session of the General Assembly.

43-34-248. (For effective date, see note.) Agreement with consulting physician.

(a) Any facility providing cosmetic laser services other than hair removal using lasers or pulsed light devices shall have an agreement with a consulting physician who shall:

- (1) Be trained in laser modalities;
- (2) Establish proper protocols for the cosmetic laser services provided at the facility and file such protocols with the board;
- (3) Examine each patient prior to any cosmetic laser service other than hair removal using lasers or pulsed light devices being performed; provided, however, that a consulting physician may delegate the authority to perform such examination to a physician assistant who is a licensed cosmetic laser practitioner, in accordance with a job description approved by the board, or to a registered professional nurse who is also an advanced practice registered nurse as defined in paragraph (1.1) of Code Section 43-26-3 and who is a licensed cosmetic laser practitioner, pursuant to a protocol approved by the board; and provided, further, that in facilities subject to the provisions of Code Section 43-34-249.1 such delegation may be to: (A) a physician assistant who is not required to be a licensed cosmetic laser practitioner, in accordance with a job description approved by the board; or (B) a registered professional nurse who is also an advanced practice registered nurse who is not required to be a licensed cosmetic laser practitioner, in accordance with a protocol approved by the board; and

(4) Be available for emergency consultation with the cosmetic laser practitioner or anyone employed by the facility.

(b) Any facility providing cosmetic laser services other than hair removal using lasers or pulsed light devices shall have a supervisor present at the facility or immediately available for consultation and supervision either personally or via telecommunications. The supervisor shall supervise the performance of all cosmetic laser services performed by a person other than the consulting physician. The supervisor shall be a physician licensed under this chapter who is trained in laser modalities or a senior laser practitioner.

(c)(1) Any facility providing cosmetic laser services other than hair removal using lasers or pulsed light devices shall post a sign listing the consulting physician's name, emergency contact number, his or her board certification and specialty, and the address of his or her principal place of practice, and indicating whether he or she is presently on site at the facility.

(2) If the consulting physician is not on site for any period of time during which the facility is open, the facility shall post a sign indicating who is presently acting as the supervisor for the facility and that person's name, emergency contact number, his or her degrees and qualifications, and the type of cosmetic laser practitioner license held. (Code 1981, § 43-34-248, enacted by Ga. L. 2007, p. 626, § 1/HB 528; Ga. L. 2009, p. 859, § 1/HB 509; Ga. L. 2009, p. 989, § 3/SB 104; Ga. L. 2010, p. 878, § 43/HB 1387.)

Delayed effective date. — Ga. L. 2009, p. 859, § 17, provides that the 2009 amendment becomes effective when funds are specifically appropriated for the purposes of Ga. L. 2007, p. 626. Funds were not appropriated at the 2009, 2010, or 2011 session of the General Assembly.

Ga. L. 2009, p. 989, § 7, provides that the 2009 amendment becomes effective only if and when the Georgia Cosmetic Laser Services Act becomes effective. For additional information, see the delayed effective date note at the beginning of this article.

Ga. L. 2010, p. 878, § 55, provides that the 2010 amendment becomes effective only when the Georgia Cosmetic Laser Services Act becomes effective. For additional information, see the delayed effective

date note at the beginning of this article.

The 2009 amendments. — The first 2009 amendment reenacted this Code section without change. The second 2009 amendment rewrote this Code section. For effective date of these amendments, see the delayed effective date notes.

The 2010 amendment, part of an Act to revise, modernize, and correct the Code, substituted "physician assistant" for "physician's assistant" twice in paragraph (a)(3). For effective date of this amendment, see the delayed effective date notes.

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

43-34-249. (For effective date, see note.) Informed consent.

(a) Prior to receiving cosmetic laser services from a cosmetic laser practitioner, a person must consent in writing to such services and shall be informed in writing of the general terms of the following:

(1) The nature and purpose of such proposed procedure;

(2) Any material risks generally recognized and associated with the cosmetic laser service to be performed which, if disclosed to a reasonably prudent person in the customer's position, could reasonably be expected to cause such prudent person to decline such proposed cosmetic laser services on the basis of the material risk of injury that could result from such proposed services;

(3) The name of, degrees and qualifications held by, and type of licenses obtained by the individual who will be performing the cosmetic laser service, and with respect to cosmetic laser services other than hair removal, the supervisor and the consulting physician;

(4) The steps to be followed after the cosmetic laser service is performed in the event of any complications; and

(5) With respect to cosmetic laser services other than hair removal, the emergency contact information for the consulting physician and the address of his or her principal place of practice.

(a.1) After receiving each cosmetic laser service other than hair removal, a person shall be informed in writing of the information required by paragraphs (4) and (5) of subsection (a) of this Code section.

(b) It shall be the responsibility of the cosmetic laser practitioner to ensure that the information required by subsections (a) and (a.1) of this Code section is disclosed and that the consent provided for in this Code section is obtained.

(c) Where the consumer is under 18 years of age, the consent of the consumer's parent or legal guardian shall be required.

(d) The board shall be required to adopt and have the authority to promulgate rules and regulations governing and establishing the standards necessary to implement this Code section specifically including but not limited to the disciplining of a cosmetic laser practitioner who fails to comply with this Code section.

(e) Nothing in this Code section shall prohibit the information provided for in this Code section from being disclosed through the use of video tapes, audio tapes, pamphlets, booklets, or other means of communication or through conversations with the cosmetic laser practitioner; provided, however, that such information is also provided in writing and attached to the consent form which the consumer signs. (Code 1981, § 43-34-249, enacted by Ga. L. 2007, p. 626, § 1/HB 528; Ga. L. 2009, p. 859, § 1/HB 509; Ga. L. 2009, p. 989, § 4/SB 104.)

Delayed effective date. — Ga. L. 2009, p. 859, § 17, provides that the 2009 amendment becomes effective when funds are specifically appropriated for the purposes of Ga. L. 2007, p. 626. Funds were not appropriated at the 2009, 2010, or 2011 session of the General Assembly.

Ga. L. 2009, p. 989, § 7, provides that the 2009 amendment becomes effective only if and when the Georgia Cosmetic Laser Services Act becomes effective. For additional information, see the delayed

effective date note at the beginning of this article.

The 2009 amendments. — The first 2009 amendment reenacted this Code section without change. The second 2009 amendment rewrote subsection (a); added subsection (a.1); and, in subsection (b), substituted "subsections (a) and (a.1)" for "subsection (a)" in the middle. For effective date of these amendments, see the delayed effective date notes.

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 2007, “be” was inserted in paragraph (a)(3).

Editor’s notes. — For information as

to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

43-34-249.1. (For effective date, see note.) Waiver.

The board shall have the authority to waive the requirements of subsection (c) of Code Section 43-34-248 and paragraph (5) of subsection (a) of Code Section 43-34-249 for facilities offering cosmetic laser services which serve as a principal place of practice at which a physician regularly sees patients if medical services are regularly performed at such facilities. For purposes of this Code section, “medical services” shall mean the general and usual services and care rendered and administered by a physician. (Code 1981, § 43-34-249.1, enacted by Ga. L. 2009, p. 989, § 5/SB 104.)

Delayed effective date. — Ga. L. 2009, p. 989, § 7, provides that this Code section becomes effective only if and when the Georgia Cosmetic Laser Services Act

becomes effective. For additional information, see the delayed effective date note at the beginning of this article.

43-34-250. (For effective date, see note.) Advisory committee.

The board shall appoint an advisory committee. The advisory committee shall include licensed cosmetic laser practitioners licensed under this article and such members as the board in its discretion may determine. The advisory committee shall include at least one person licensed to practice medicine under this chapter and specialized in a field with expertise in the biologic behavior of the skin. Members shall receive no compensation for service on the committee. The committee shall have such advisory duties and responsibilities as the board may determine, including but not limited to consulting with the board on the issuance, denial, suspension, and revocation of licenses and the promulgation of rules and regulations under this article. The initial members of the advisory committee may include persons eligible for licensing under this article. Subsequent advisory committee members must be licensed pursuant to this article. (Code 1981, § 43-34-250, enacted by Ga. L. 2007, p. 626, § 1/HB 528; Ga. L. 2009, p. 859, § 1/HB 509; Ga. L. 2009, p. 989, § 6/SB 104.)

Delayed effective date. — Ga. L. 2009, p. 859, § 17, provides that the 2009 amendment becomes effective when funds are specifically appropriated for the purposes of Ga. L. 2007, p. 626. Funds were not appropriated at the 2009, 2010, or 2011 session of the General Assembly.

Ga. L. 2009, p. 989, § 7, provides that the 2009 amendment becomes effective

only if and when the Georgia Cosmetic Laser Services Act becomes effective. For additional information, see the delayed effective date note at the beginning of this article.

The 2009 amendments. — The first 2009 amendment substituted “include” for “be representative of a cross section of the cultural backgrounds, to the extent prac-

tical, of the” near the beginning of the second sentence. The second 2009 amendment added the present third sentence. For effective date of these amendments, see the delayed effective date notes.

Editor’s notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

43-34-251. (For effective date, see note.) Prohibited activities.

(a) It shall be unlawful for any person licensed as a cosmetic laser practitioner to perform cosmetic laser services within any area within one inch of the nearest part of the eye socket of any consumer.

(b) It shall be unlawful for any person licensed as a cosmetic laser practitioner to administer any pharmaceutical agent or other substance by injection. (Code 1981, § 43-34-251, enacted by Ga. L. 2007, p. 626, § 1/HB 528; Ga. L. 2009, p. 859, § 1/HB 509.)

Editor’s notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.
Ga. L. 2009, p. 859, § 1, effective when

funds are specifically appropriated for the purposes of Ga. L. 2007, p. 626, reenacted this Code section without change. Funds were not appropriated at the 2009, 2010, or 2011 session of the General Assembly.

43-34-252. (For effective date, see note.) Noncompliance of facility owner; penalty.

Any person who owns a facility in which cosmetic laser services are offered or performed in noncompliance with the requirements of this article shall be guilty of a misdemeanor. (Code 1981, § 43-34-252, enacted by Ga. L. 2007, p. 626, § 1/HB 528; Ga. L. 2009, p. 859, § 1/HB 509.)

Editor’s notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.
Ga. L. 2009, p. 859, § 1, effective when

funds are specifically appropriated for the purposes of Ga. L. 2007, p. 626, reenacted this Code section without change. Funds were not appropriated at the 2009, 2010, or 2011 session of the General Assembly.

43-34-253. (For effective date, see note.) Violation; penalty.

Any person convicted of violating any provision of this article shall be guilty of a misdemeanor. (Code 1981, § 43-34-253, enacted by Ga. L. 2007, p. 626, § 1/HB 528; Ga. L. 2009, p. 859, § 1/HB 509.)

Editor’s notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.
Ga. L. 2009, p. 859, § 1, effective when

funds are specifically appropriated for the purposes of Ga. L. 2007, p. 626, reenacted this Code section without change. Funds were not appropriated at the 2009, 2010, or 2011 session of the General Assembly.

CHAPTER 34A

PATIENT RIGHT TO KNOW

Sec.

43-34A-1. Short title.

43-34A-2. Definitions.

43-34A-3. Physician profiles; dissemination to public; content and maintenance requirements; corrections; judgments prior to April 11, 2001; sealed judgments, arbitration awards, and settlements prohibited.

43-34A-4. Requests for physician profiles; fees; confidentiality; dispersal of inaccurate profile prohibited.

43-34A-5. Patient's right to inquire as to

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medical malpractice coverage and to estimation of fees; collection of payment prior to rendering of services.

43-34A-6. Right to file grievance with state board; display of declaration of rights in waiting rooms; board review of complaints; inclusion in physician profile.

43-34A-7. Violations of chapter; penalty.

43-34A-8. Deadline for physician profiles; promulgation of chapter regulations.

43-34A-9. Annual report.

Cross references. — Regulation of state hospitals and related institutions, T. 31, C. 7, A. 1.

Administrative rules and regulations. — Patients rights, Official Compilation of the Rules and Regulations of the

State of Georgia, Composite State Board of Medical Examiners, Chapter 360-27.

Law reviews. — For note on the 2001 enactment of this chapter, see 18 Georgia St. U.L. Rev. 249 (2001).

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §§ 17 et seq., 158, 165.4, 174.

C.J.S. — 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers, §§ 11 et seq., 61.

43-34A-1. Short title.

This chapter shall be known and may be cited as the "Patient Right to Know Act of 2001." (Code 1981, § 43-34A-1, enacted by Ga. L. 2001, p. 192, § 5.)

43-34A-2. Definitions.

As used in this chapter, the term:

(1) "Board" means the Georgia Composite Medical Board.

(2) "Current" means within the last six months.

(3) "Disciplinary action" means any final hospital disciplinary action or any final disciplinary action taken by the Georgia Composite Medical Board under subsection (b) of Code Section 43-34-8 within

the immediately preceding ten-year period. No such disciplinary action taken prior to April 11, 2001, shall be included within the definition of this term.

(4) “Hospital” means a facility that provides inpatient and outpatient care and services for the diagnosis and treatment of medical conditions.

(5) “Hospital privileges” means permission granted by a hospital to a physician to treat patients in that hospital. (Code 1981, § 43-34A-2, enacted by Ga. L. 2001, p. 192, § 5; Ga. L. 2009, p. 859, §§ 2, 14/HB 509.)

The 2009 amendment, effective July 1, 2009, substituted “Georgia Composite Medical Board” for “Composite State Board of Medical Examiners” in paragraph (1) and in the middle of the first sentence of paragraph (3) and substituted “Code Section 43-34-8” for “Code Section

43-34-37” in the middle of the first sentence of paragraph (3).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, “April 11, 2001,” was substituted for “the effective date of this chapter” in paragraph (3).

43-34A-3. Physician profiles; dissemination to public; content and maintenance requirements; corrections; judgments prior to April 11, 2001; sealed judgments, arbitration awards, and settlements prohibited.

(a) The Georgia Composite Medical Board shall create physician profiles on each physician licensed to practice in this state under Chapter 34 of this title.

(b) In creating physician profiles, the board shall by regulation establish a standard form for the collection and dissemination of such data to the public, including dissemination on the Internet. The information may be gathered from the physician, the board, medical malpractice insurers, hospitals, medical and specialty societies, and other appropriate sources. The information shall be compiled in a form which can be disseminated to a member of the public upon request. Additionally, the board shall include in a physician’s profile comments submitted by the physician regarding information published in the physician’s profile. Such comments shall not exceed 100 words. The physician shall have 30 days to submit comments from the date of receipt of the profile or any amended profile if the amendment relates to malpractice, hospital staff privileges, or disciplinary action.

(c) The physician profile shall include the following information:

(1) The full name of the physician;

(2) Names of medical schools attended, dates of attendance, and date of graduation;

- (3) The location and dates of graduate medical education;
- (4) Specialty board certification, if applicable. The toll-free number of the American Board of Medical Specialties shall be included to verify current board certification status;
- (5) The fact that a license has been granted by reciprocity under Code Section 43-34-31, if applicable;
- (6) The number of years in practice and locations;
- (7) Current hospital privileges;
- (8) The location of primary practice setting;
- (9) If requested by the physician, identification of any translating services available at the primary practice setting;
- (10) Participation in the Medicaid program, if applicable;
- (10.1) Whether carrying any medical malpractice insurance;
- (11) Criminal convictions for felonies, irrespective of the pendency or availability of an appeal;
- (12) Felony charges to which a plea of nolo contendere was entered;
- (13) A description of any final, public disciplinary action by a regulatory board and a description of any second or subsequent final private reprimand by a regulatory board. As used in this paragraph, the term "regulatory board" refers to:
 - (A) The Georgia Composite Medical Board and its counterpart in any other state; and
 - (B) Any state licensing board in Georgia or in any other state;
- (14) A description of any final revocation or any final disciplinary action resulting in any restriction of hospital privileges, either involuntary or by agreement, for reasons related to competence or character in the most recent ten years. No such revocation or restriction taken prior to April 11, 2001, shall be included in the physician's profile;
- (15) Resignation from or nonrenewal of medical staff membership or the restriction of staff privileges at a hospital taken in lieu of or in settlement of pending disciplinary action related to competence or character in the most recent ten years. No such action taken prior to April 11, 2001, shall be included in the physician's profile;
- (16) Final medical malpractice court judgments or medical malpractice arbitration awards entered on or after April 11, 2001, in which payment in excess of \$100,000.00 is awarded against the

physician to the complaining party. No such judgments or awards prior to April 11, 2001, shall be included in any physician's profile. No such medical malpractice court judgments or medical malpractice arbitration awards which occurred more than ten years prior to the date of the profile shall be included in any physician profile;

(17)(A) Medical malpractice settlements, including the monetary amount of each such settlement, in which payment in excess of \$300,000.00 is made by or on behalf of and attributable to the physician to the complaining party. No such settlement occurring prior to April 11, 2001, shall be included in any physician profile. No such settlement which occurred more than ten years prior to the date of the profile shall be included in any physician profile.

(B) Medical malpractice settlements, including the monetary amount of each such settlement, if three medical malpractice settlements have been made by or on behalf of and attributable to the physician to the complaining party and payment in excess of \$100,000.00 has been made by or on behalf of and attributable to the physician in any one or more of such settlements. No such settlement occurring prior to April 11, 2001, shall be included in any physician profile nor shall any such settlement be included for the purpose of determining whether three medical malpractice settlements have been made by or on behalf of and attributable to the physician. No such settlement which occurred more than ten years prior to the date of the profile shall be included in any physician profile nor shall any such settlement be included for the purpose of determining whether three medical malpractice settlements have been made by or on behalf of and attributable to the physician.

(C) All medical malpractice settlements, including the monetary amount of each such settlement, if four or more medical malpractice settlements have been made by or on behalf of and attributable to the physician to the complaining party, regardless of the amount of the payment made by or on behalf of and attributable to the physician in any such settlement. No such settlement occurring prior to April 11, 2001, shall be included in any physician profile nor shall any such settlement be included for the purpose of determining whether four or more medical malpractice settlements have been made by or on behalf of and attributable to the physician. No such settlement which occurred more than ten years prior to the date of the profile shall be included in any physician profile nor shall any such settlement be included for the purpose of determining whether four or more medical malpractice settlements have been made by or on behalf of and attributable to the physician.

(D) Any disclosure under this paragraph shall be accompanied by the following statement:

“Settlement of a claim may occur for a variety of reasons which do not necessarily reflect negatively on the professional competence or conduct of the physician. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred.”;

(18) Pending malpractice claims shall not be disclosed;

(19) The board may, in its discretion, include additional statements describing the experience or pattern of awards, judgments, or settlements of the physician. Information concerning paid medical malpractice claims may be put in context by comparing an individual licensee's medical malpractice judgments, awards, or settlements to the experience of other physicians within the same specialty;

(20) Any complaint or grievance filed with the board and upon which the board took disciplinary action, including a description of the nature of the complaint and the resolution; and

(21) All violations of this chapter.

(d) The physician profile may include information relating to:

(1) Appointment to medical school faculties within the most recent ten years;

(2) Articles in professional publications and journals; and

(3) Professional or community service membership, activities, and awards.

(e) The physician profiles shall be updated by the board as required in this subsection:

(1) The profile items listed in paragraphs (11) through (17) of subsection (c) of this Code section inclusive shall be reported to the board by the physician involved within ten days of the judgment, award, settlement, revocation, resignation, or disciplinary action, and the board shall update the physician's profile with such changes within ten days of receipt of such information; and

(2) All other changes to the physician profile shall be reported by the physician to the board within 30 days of the change, and the board shall verify and update the physician profile with such new information within 15 days.

(f) The physician may request a copy of the profile and may submit corrections to the board. The board shall verify corrections and make changes to the profile within five business days of receipt of the

corrected information by the board. The physician may request postcorrection publication by the board to whomever received the profile containing the error.

(g) Notwithstanding the provisions of subsection (c) of this Code section, no final medical malpractice court judgment, medical malpractice arbitration award, or medical malpractice settlement which was awarded prior to April 11, 2001, and which was sealed by order of a court prior to April 11, 2001, shall be required to be disclosed pursuant to subsection (c) of this Code section. No final medical malpractice court judgment, medical malpractice arbitration award, or medical malpractice settlement which is awarded on or after April 11, 2001, shall be confidential or sealed with regard to information which is needed to comply with the purposes of this chapter. (Code 1981, § 43-34A-3, enacted by Ga. L. 2001, p. 192, § 5; Ga. L. 2002, p. 415, § 43; Ga. L. 2005, p. 60, § 43/HB 95; Ga. L. 2009, p. 859, § 2/HB 509; Ga. L. 2011, p. 438, § 1/HB 147.)

The 2009 amendment, effective July 1, 2009, substituted “Georgia Composite Medical Board” for “Composite State Board of Medical Examiners” in subsection (a) and subparagraph (c)(13)(A).

The 2011 amendment, effective July 1, 2011, added paragraph (c)(10.1).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, “April 11, 2001,” was substituted for “the effective date of this chapter” throughout this Code section.

Pursuant to Code Section 28-9-5, in 2002, “specialty” was substituted for “speciality” in the second sentence of subsection (b) and “Specialty” and “Specialties” were substituted for “Speciality” and “Specialities” in paragraph (c)(4), respectively.

Administrative rules and regulations. — Physician profiles, Official Compilation of the Rules and Regulations of the State of Georgia, Composite State Board of Medical Examiners, Chapter 360-28.

43-34A-4. Requests for physician profiles; fees; confidentiality; dispersal of inaccurate profile prohibited.

Any person or entity has the right to receive a physician profile from the board upon request. Requests for physician profiles shall be accepted by the board by telephone, in writing, or by e-mail. The person or entity requesting the profile shall provide the name of the physician for whom a profile is sought. The board may charge a nominal fee for copying as is permitted under subsection (c) of Code Section 50-18-71. The board shall not require the person or entity requesting a physician’s profile to use a specific request form or provide a statement of reason for requesting the profile. The board shall not be required to prepare reports, summaries, or compilations of profiles not in existence at the time of the request. The board shall keep both the identity of the person or entity who requests a physician’s profile and the request confidential. The board must respond to all requests within three business days by sending a copy of the physician profile to the requester. Fees may be charged in accordance with subsection (c) of

Code Section 50-18-71. A physician may make available his or her current unaltered board approved profile to the patients in his or her practice. The physician may not knowingly disperse a profile that does not disclose recent disciplinary actions, criminal convictions, revocations or restriction of hospital privileges, settlements, medical malpractice judgments, or arbitration awards as set forth in paragraphs (11) through (17) of subsection (c) of Code Section 43-34A-3. (Code 1981, § 43-34A-4, enacted by Ga. L. 2001, p. 192, § 5; Ga. L. 2011, p. 752, § 43/HB 142.)

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted “by e-mail” for “by electronic mail” in the second sentence.

43-34A-5. Patient’s right to inquire as to medical malpractice coverage and to estimation of fees; collection of payment prior to rendering of services.

A patient has the right to inquire as to whether the physician carries medical malpractice insurance and as to the estimated charges for a routine office visit, routine treatments, and lab tests prior to receiving such treatment. When asked for such information, the physician or other authorized personnel shall give such information freely and without reservation or evasion. Violation of this right should be reported immediately to the board. Physicians are not responsible for ascertaining the details of the patient’s insurance coverage and explaining such information to the patient. A physician may require the payment of his or her fee or any applicable copayment in advance of delivering professional services unless otherwise prohibited by law. (Code 1981, § 43-34A-5, enacted by Ga. L. 2001, p. 192, § 5; Ga. L. 2011, p. 438, § 2/HB 147.)

The 2011 amendment, effective July 1, 2011, inserted “whether the physician carries medical malpractice insurance and as to” in the first sentence of this Code section.

43-34A-6. Right to file grievance with state board; display of declaration of rights in waiting rooms; board review of complaints; inclusion in physician profile.

(a) The patient or any person that the board deems to have a legitimate interest has the right to file a grievance with the board concerning a physician, staff, office, or treatment received.

(b) A declaration of the patient’s rights shall be prominently displayed in conspicuous language in the physician’s waiting room. This declaration may be contained in the same notice as the right to obtain

physician profiles. The declaration of rights shall contain the following statement:

“The patient has the right to file a grievance with the Georgia Composite Medical Board concerning the physician, staff, office, and treatment received. The patient should either call the board with such a complaint or send a written complaint to the board. The patient should be able to provide the physician or practice name, the address, and the specific nature of the complaint.”

Such notice shall include the current phone number and address of the board.

(c) The board must review every complaint received to determine if there is sufficient evidence to warrant an investigation according to a procedure established by board regulation. Only investigated complaints upon which the board has taken disciplinary action shall be included in a physician's profile. The board must take the appropriate action as set forth in the regulations promulgated by the board. The board must respond in writing to the complaint within 60 days. In the response, the board shall inform the person whether the complaint is being referred for investigation, and if the complaint has been investigated, the results of the investigation or whether further investigation is required, and any board action taken. (Code 1981, § 43-34A-6, enacted by Ga. L. 2001, p. 192, § 5; Ga. L. 2009, p. 859, § 2/HB 509.)

The 2009 amendment, effective July 1, 2009, substituted “Georgia Composite Medical Board” for “Composite State Board of Medical Examiners” in the first sentence of the statement contained in subsection (b).

43-34A-7. Violations of chapter; penalty.

(a) Any physician or authorized personnel violating any provision of this chapter shall be assessed a monetary fine as determined by the board by regulation for each day or instance of violation.

(b) A record of the violation shall be maintained as part of the physician profile. (Code 1981, § 43-34A-7, enacted by Ga. L. 2001, p. 192, § 5.)

43-34A-8. Deadline for physician profiles; promulgation of chapter regulations.

(a) The board shall have profiles ready and be able to respond to request for profiles no later than July 1, 2002.

(b) All regulations required under this chapter shall be promulgated by the board by July 1, 2002. (Code 1981, § 43-34A-8, enacted by Ga. L. 2001, p. 192, § 5.)

Administrative rules and regulations. — Physician profiles, Official Compilation of the Rules and Regulations of the State of Georgia, Composite State Board of Medical Examiners, Chapter 360-28.

43-34A-9. Annual report.

(a) On January 1 of each year, the board shall compile a report for the Governor and General Assembly containing a statistical and comparative data analysis using information obtained from the physician profiles in addition to other information collected by the board. The board shall not be required to distribute copies of the report to the Governor or members of the General Assembly but shall provide notification of the availability of the report in the manner which it deems to be the most effective and efficient.

(b) The report shall include, but shall not be limited to, the following information:

(1) The number of physicians for which it has created physician profiles;

(2) The specialty board certification of such physicians;

(3) The geographic regions of the primary practices;

(4) The number of physicians participating in the Medicaid program; and

(5) The number of physicians carrying any medical malpractice insurance and the specialty and current hospital privileges of the physicians not carrying such insurance and whether such physicians are actively seeing patients. (Code 1981, § 43-34A-9, enacted by Ga. L. 2011, p. 438, § 3/HB 147.)

Effective date. — This Code section became effective July 1, 2011.

CHAPTER 35

PODIATRY PRACTICE

Sec.		Sec.	
43-35-1.	Short title.	43-35-12.	Eligibility for license.
43-35-2.	Purpose.	43-35-13.	Issuance of license without examination.
43-35-3.	Definitions.	43-35-14.	Examination of applicants.
43-35-4.	Continuation of board.	43-35-15.	Renewal of licenses; continuing education requirements.
43-35-5.	Members of board; appointment; oath; removal.	43-35-16.	Suspension, revocation, cancellation, or denial of license; other discipline; judicial review; reinstatement; immunity; failure of licensee to appear; voluntary surrender of license.
43-35-6.	Eligibility for appointment to board.	43-35-17.	Practice without license deemed public nuisance; injunctions.
43-35-7.	Quorum of board; conduct of business by telephone.	43-35-18.	Criminal penalty.
43-35-8.	Duties of division director.		
43-35-9.	Duties of board.		
43-35-10.	Rules and regulations.		
43-35-11.	License requirement; exceptions; training and practice of podiatric residents; limited temporary licenses; delegation.		

Editor's notes. — Ga. L. 1994, p. 1375, § 1, effective July 1, 1994, repealed the Code sections formerly codified at this chapter and enacted the current chapter. The former chapter consisted of §§ 43-35-1 through 43-35-13, 43-35-13.1, and 43-35-14 and was based on Ga. L. 1933, p. 115, §§ 1-4, 7-11; Code 1933, §§ 84-601 — 84-604, 84-606 — 84-608, 84-608.1, 84-609 — 84-611, 84-9906; Ga. L. 1956, p. 242, §§ 1-6; Ga. L. 1958, p. 174, §§ 1-4, 6-12; Ga. L. 1973, p. 824, § 1; Ga. L. 1976, p. 355, §§ 1-3; Ga. L. 1978, p.

1454, §§ 1, 2; Ga. L. 1979, p. 612, § 1; Ga. L. 1982, p. 3, § 43; Ga. L. 1982, p. 1621, §§ 1-3, 3.1, 4, 5; Ga. L. 1983, p. 796, § 1; Ga. L. 1984, p. 22, § 43; Ga. L. 1988, p. 530, § 8; Ga. L. 1989, p. 295, §§ 1-3; Ga. L. 1992, p. 3137, § 28; Ga. L. 1992, p. 2136, § 1; Ga. L. 1994, p. 97, § 43.

Administrative rules and regulations. — Organization, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Podiatry Examiners, Chapter 500-1.

OPINIONS OF THE ATTORNEY GENERAL

Scholarships. — State Medical Education Board may not grant scholarships to applicants in the field of podiatry. 1982

Op. Att'y Gen. No. 82-62 (rescinding 1982 Op. Att'y Gen. No. 82-49).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 39 Am. Jur. 2d, Health, §§ 1 et seq., 26 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 72

Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614,

615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 39A C.J.S., Health and Environment, §§ 3 et seq., 37 et seq., 48 et seq. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Failure to procure occupational or business license or permit as affecting

validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

Constitutionality of statute prescribing conditions of practicing medicine or surgery as affected by question of discrimination against particular school or method, 42 ALR 1342; 54 ALR 600.

Liability of chiropractor for malpractice, 80 ALR2d 1278.

Validity, construction and application of podiatry or chiropody statutes, 45 ALR4th 888.

Physicians' and surgeons' liens, 39 ALR5th 787.

43-35-1. Short title.

This chapter shall be known and may be cited as the "Georgia Podiatry Practice Act." (Code 1981, § 43-35-1, enacted by Ga. L. 1994, p. 1375, § 1.)

43-35-2. Purpose.

This chapter is enacted for the purpose of safeguarding the public health, safety, and welfare by providing for administrative control, supervision, and regulation of the practice of podiatric medicine in this state. The practice of podiatric medicine is declared to be affected with the public interest. (Code 1981, § 43-35-2, enacted by Ga. L. 1994, p. 1375, § 1.)

43-35-3. Definitions.

As used in this chapter, the term:

- (1) "Board" means the State Board of Podiatry Examiners.
- (2) "License" means a valid and current certificate of registration issued by the division director on behalf of the board which shall give the person to whom it is issued authority to engage in the practice prescribed thereon.
- (3) "Licensee" means one who holds a license under this chapter.
- (4) "Person" means a human person only.
- (5) "Podiatric medicine," which includes chiropody, podiatry, and podiatric medicine and surgery, means that portion of the practice of medicine identified by the acts described in any one or more of the following:

- (A) Charging a fee or other compensation, either directly or indirectly, for any history or physical examination of a patient in a

person's office or in a hospital, clinic, or other similar facility prior to, incident to, and necessary for the diagnosis and treatment, by primary medical care, surgical or other means, of diseases, ailments, injuries, or abnormal conditions of the human foot and leg;

(B) Holding oneself out to the public, either directly or indirectly, as being engaged in the practice of podiatric medicine;

(C) Displaying or using a title or abbreviation such as "Doctor of Podiatric Medicine," "D.P.M.," "Foot Doctor," "Foot Specialist," "Foot Surgeon," "Foot and Ankle Surgeon," or other letters, designations, or symbols or signs of any type which expressly or implicitly indicate to the general public that the user renders treatment to the foot, ankle, and leg under the provisions of this chapter;

(D) Performing surgery on the foot or leg of a patient, except that when such surgery is performed under general anesthesia it shall be permissible only when said surgery is performed at a facility permitted and regulated as a hospital or ambulatory surgical treatment center under Article 1 of Chapter 7 of Title 31 and when said general anesthesia is administered under the direction of a duly licensed physician;

(E) Performing amputations of the toe; or

(F) Performing amputations distal to and including the tarsometatarsal joint but only when performed in a facility permitted and regulated as a hospital or ambulatory surgical treatment center under Article 1 of Chapter 7 of Title 31 and when performed by a podiatrist who is certified by the board in meeting the requirements which shall be established by regulations of the board which have been jointly approved by the board and the Georgia Composite Medical Board.

(6) "Podiatric resident" means a person who is engaged in a postgraduate program of study or practice within this state approved by the board.

(7) "Podiatrist" means a physician and surgeon of the human foot and leg who is subject to this chapter. (Code 1981, § 43-35-3, enacted by Ga. L. 1994, p. 1375, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2009, p. 859, § 2/HB 509.)

The 2009 amendment, effective July 1, 2009, substituted "Georgia Composite Medical Board" for "Composite State

Board of Medical Examiners" at the end of subparagraph (5)(F).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 84-901 are included in the annotations for this Code section.

Podiatrists did not hold full-practice licenses because under former Code 1933, § 84-901 (see O.C.G.A. § 43-34-20) the "practice of medicine" was not defined as limited to any area of the body. *Shaw v. Hospital Auth.*, 507 F.2d 625 (5th Cir. 1975) (decided under former Code 1933, § 84-901).

Authorized treatment by podiatrist. — Insofar as the human foot and leg

were concerned, a podiatrist was capable of rendering same treatment orthopedist could give, short of amputation. *Sandford v. Howard*, 161 Ga. App. 495, 288 S.E.2d 739 (1982) (decided under former Code 1933, § 84-901).

Orthopedic surgeons can testify in podiatric malpractice cases as expert witnesses on the standard of care required of podiatrists. *Sandford v. Howard*, 161 Ga. App. 495, 288 S.E.2d 739 (1982) (decided under former Code 1933, § 84-901).

Cited in Georgia Ass'n of Osteopathic Physicians & Surgeons, Inc. v. Allen, 31 F. Supp. 206 (M.D. Ga. 1940).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 84-901 are included in the annotations for this Code section.

Podiatry fell within definition of "medical practice". — Definition of "podiatry" placed the activities of practitioners of that profession clearly within the definition of "medical practice" and "practice of medicine" as those terms were defined in former Code 1933, § 84-901 (see O.C.G.A. § 43-34-20). 1971 Op. Att'y Gen. No. 71-133; 1971 Op. Att'y Gen. No. 71-199 (decided under former Code 1933, § 84-901).

Definition of "podiatry" was sufficient to bring podiatrists within the definition of medical practitioners for insurance purposes. 1972 Op. Att'y Gen. No. U72-17 (decided under former Code 1933, § 84-901).

Although licensed only for a limited practice of medicine, podiatrists should be included within the term "licensed doctors of medicine" as that term was used in former Code 1933, § 56-1708 (see O.C.G.A. § 33-19-13). 1971 Op. Att'y Gen. No. 71-133 (decided under former Code 1933, § 84-901).

Podiatrists may perform nearly same treatments as medical doctors

on feet. — Podiatrists are licensed to perform, with exception of amputation or use of any anaesthetic other than local, the same medical treatment as M.D.'s, so long as treatment is confined to human foot and leg. 1971 Op. Att'y Gen. No. 71-199 (decided under former Code 1933, § 84-901).

Podiatrist may perform surgery on feet and legs. — Podiatrist may perform surgery or treatment upon human foot and leg of patient who is under an anesthetic other than local, provided that the anesthetic is administered by a qualified anesthesiologist other than a podiatrist. 1963-65 Op. Att'y Gen. p. 649 (decided under former Code 1933, § 84-901).

Podiatrists may not themselves give general anesthetics. — Definition of podiatry should be interpreted literally; such a construction would preclude use by podiatrists of any anesthetics other than a "local" anesthetic. 1971 Op. Att'y Gen. No. 71-4 (decided under former Code 1933, § 84-901).

Osteopath may practice within scope of "healing art" as defined and construed in *Mabry v. State Bd. of Exmrs.*, 190 Ga. 751, 10 S.E.2d 740 (1940) without infringing upon practitioners of other healing arts. 1962 Op. Att'y Gen. p. 389 (decided under former Code 1933, § 84-901).

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians and Surgeons and Other Healers, §§ 4, 26 et seq.
C.J.S. — 70 C.J.S, Physicians and Surgeons and Other Health-Care Providers, §§ 5, 11 et seq.

ALR. — Liability of chiroprapist for malpractice, 80 ALR2d 1278.
Validity, construction and application of podiatry or chiropody statutes, 45 ALR4th 888.

43-35-4. Continuation of board.

The State Board of Podiatry Examiners which existed on January 1, 1994, is continued in existence on and after that date. The members serving on the board on January 1, 1994, and any person appointed to fill a vacancy in such office shall continue to serve out their respective terms of office and until their successors are appointed and qualified. Their successors shall be appointed as provided by this chapter. (Code 1981, § 43-35-4, enacted by Ga. L. 1994, p. 1375, § 1.)

Administrative rules and regulations. — Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of State Board of Podiatry Examiners, Chapter 500-1 et seq.

JUDICIAL DECISIONS

Cited in Sandford v. Howard, 161 Ga. App. 495, 288 S.E.2d 739 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Granting scholarships to podiatry students. — Since podiatrist school graduates are not subject to licensure by Composite State Board of Medical Examiners, the educational programs of such schools do not meet one of the primary qualifications upon which scholarships are granted; thus, the State Medical Education Board may not legally grant scholarships to applicants in field of podiatry. 1982 Op. Att’y Gen. No. 82-62.

RESEARCH REFERENCES

ALR. — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.
Disqualification, for bias or interest, of member of occupation or profession sitting in license revocation proceeding, 97 ALR2d 1210.

43-35-5. Members of board; appointment; oath; removal.

The State Board of Podiatry Examiners continued pursuant to Code Section 43-35-4 shall consist of four members. Any vacancy in office of such board resulting from expiration of term after this chapter becomes effective on July 1, 1994, shall be filled by appointment by the Governor and approval by the Senate for a term of three years. Three members

shall be podiatrists and may be appointed from a list of at least three persons submitted to the Governor by the Georgia Podiatric Medical Association. The fourth member shall be appointed from the public at large and shall have no connection to the practice of podiatric medicine. All appointees to the board shall, immediately following their appointment, take and subscribe to a written oath or affirmation required by law for public officers. The Governor, after notice and opportunity for hearing, may remove any member for neglect of duty, incompetence, revocation or suspension of license, or other dishonorable conduct. After such removal, or after a vacancy due to other reasons, the Governor shall appoint a successor to serve the unexpired term. (Code 1981, § 43-35-5, enacted by Ga. L. 1994, p. 1375, § 1; Ga. L. 1999, p. 81, § 43; Ga. L. 2002, p. 415, § 43.)

Law reviews. — For comment on *Rogers v. Medical Ass'n*, 244 Ga. 151, 259 S.E.2d 85 (1979), invalidating Georgia statute requiring Governor's appointments to Composite State Board of Medi-

cal Examiners be made solely from nominees submitted by state medical society as an unconstitutional delegation of legislative authority to a private organization, see 29 Emory L.J. 1183 (1980).

43-35-6. Eligibility for appointment to board.

To be eligible for appointment to the board, a person must be a citizen of the United States and a resident of this state and, except for the person appointed from the public at large, must:

- (1) Hold a license issued under the provisions of this chapter; and
- (2) Have actively practiced or taught podiatry for at least five years. (Code 1981, § 43-35-6, enacted by Ga. L. 1994, p. 1375, § 1.)

43-35-7. Quorum of board; conduct of business by telephone.

A majority of the board members shall constitute a quorum for all board business and, with the exception of hearings in contested cases, may conduct business in conference by telephone. (Code 1981, § 43-35-7, enacted by Ga. L. 1994, p. 1375, § 1.)

43-35-8. Duties of division director.

The division director shall perform such administrative duties as may be prescribed by the board. (Code 1981, § 43-35-8, enacted by Ga. L. 1994, p. 1375, § 1; Ga. L. 2000, p. 1706, § 19.)

43-35-9. Duties of board.

The board shall:

- (1) Approve all examinations of applicants for licensure;

(2) Determine the qualifications of and authorize the issuance of licenses to qualified podiatrists and podiatric residents;

(3) Determine the qualifications and approve qualified colleges of podiatric medicine and courses in podiatry for the purpose of determining the qualifications of applicants for licensure;

(4) Prescribe and enforce minimum standards of professional conduct for the practice of podiatric medicine in this state;

(5) Initiate investigations into alleged or suspected violations of the provisions of this chapter or any other law of this state pertaining to podiatry and any rules and regulations adopted by the board;

(6) Conduct all hearings in contested cases according to state law;

(7) Suspend, revoke, or cancel the license of, or refuse to grant, renew, or restore a license to any person upon any ground specified in this chapter;

(8) Adopt a seal, the imprint of which, together with the authorized signature of the division director or other member authorized by the board, shall be effective to evidence its official acts;

(9) Maintain in the office of the division director a register of all persons holding a license; and

(10) Adopt such rules and regulations as shall be reasonably necessary for the enforcement and implementation of the provisions and purposes of this chapter and other laws of this state insofar as they relate to the practice of podiatric medicine. (Code 1981, § 43-35-9, enacted by Ga. L. 1994, p. 1375, § 1; Ga. L. 2000, p. 1706, § 19.)

43-35-10. Rules and regulations.

All rules and regulations adopted by the board as it existed prior to January 1, 1994, shall continue in effect until modified or repealed. (Code 1981, § 43-35-10, enacted by Ga. L. 1994, p. 1375, § 1.)

43-35-11. License requirement; exceptions; training and practice of podiatric residents; limited temporary licenses; delegation.

(a) No person shall practice podiatric medicine unless he or she holds a license and otherwise complies with the provisions of this chapter and the rules and regulations adopted by the board; provided, however, that this chapter shall not apply to any person licensed to practice medicine, as defined in Chapter 34 of this title; nor shall it apply to the recommending, fitting, or sale of corrective shoes or orthomechanical

supports or similar appliances by retail dealers or manufacturers; provided, however, that such dealers or manufacturers shall not otherwise be entitled to practice podiatric medicine as defined in this chapter unless duly licensed to do so.

(b)(1) Nothing in this chapter or any other law of this state shall prohibit the training and practice, for a period of one year or for such additional periods as the board may determine, by persons appointed as podiatric residents in programs utilizing training protocols approved by the board.

(2) Residents in podiatric medicine and surgery may perform such duties, tasks, or functions as considered appropriate for their educational advancement under the supervision of the appropriate health care practitioner.

(3) While serving in an approved postgraduate training program, residents in podiatric medicine and surgery shall not be subject to the continuing education requirements as set forth in Code Section 43-35-15.

(c)(1) Licensed podiatrists of other states and foreign countries may be permitted to enter this state for consultation with any licensed podiatric physician of this state. Such podiatrist from another state or foreign country shall not be permitted to establish offices in this state for the practice of podiatric medicine, either temporary or permanent, unless he or she obtains a license as elsewhere set forth in this chapter.

(2) A limited temporary license may, upon the approval of the board, be issued to a podiatrist from another state or country for the purpose of advancing medical education and enhancing the individual's training provided such podiatrist is fully licensed and a member in good standing in that state or country, and provided such podiatrist is under the supervision of a licensed podiatric physician of this state.

(3) A podiatrist from another state or foreign country issued a limited temporary license shall not be subject to the continuing education requirements as set forth in Code Section 43-35-15.

(d) Nothing in this chapter or other laws of this state shall prohibit the delegation by a podiatric physician to a podiatric assistant or other qualified person of any acts, duties, or functions which are otherwise permitted by law or established by custom, nor shall the state prohibit the performance of such acts, duties, or functions by such person. (Code 1981, § 43-35-11, enacted by Ga. L. 1994, p. 1375, § 1.)

RESEARCH REFERENCES

ALR. — Single or isolated transactions or occupational licensing requirements, as falling within provisions of commercial 93 ALR2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

43-35-12. Eligibility for license.

A license to practice podiatric medicine shall be issued to any person who:

- (1) Is a graduate of an accredited college of podiatric medicine approved by the board;
- (2) Holds a doctoral degree or its equivalent;
- (3) Satisfactorily passes a board approved examination, if an examination is required by the board;
- (4) Successfully completes postdoctoral training of no less than 12 months as a resident in podiatric medicine and surgery in a program or institution approved by, and in good standing with, the board;
- (5) Has attained the age of 21 years;
- (6) Is not disqualified to receive a license under the provisions of Code Section 43-35-16; and
- (7) Pays the required fee to the board. (Code 1981, § 43-35-12, enacted by Ga. L. 1994, p. 1375, § 1; Ga. L. 2010, p. 266, § 37/SB 195.)

The 2010 amendment, effective May 20, 2010, substituted “a board approved examination, if an examination is required” for “an examination prepared or approved” in the middle of paragraph (3).

43-35-13. Issuance of license without examination.

A license may, at the discretion of the board, be issued without examination to any person who:

- (1) Holds a current license authorizing him or her to practice podiatric medicine in another state or country; provided, however, the state or country has statutory requirements substantially equal to or exceeding those of this chapter;
- (2) Otherwise substantially meets all requirements for a license issued by the board;
- (3) Is not disqualified to receive a license under the provisions of Code Section 43-35-16; and
- (4) Pays the required fee to the board. (Code 1981, § 43-35-13, enacted by Ga. L. 1994, p. 1375, § 1.)

Cross references. — Cooperation between Georgia and other states generally, T. 28, C. 6.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the provisions, decisions under former Code 1933, § 84-9906 are included in the annotations for this Code section.

Board may not arbitrarily decide to reject all applications for licenses by reciprocity; however, if there is some

reason why such a policy is advisable, then the board may implement this policy by virtue of discretion vested in the board by statute. 1973 Op. Att'y Gen. No. 73-135 (decided under former Code 1933, § 84-9906).

RESEARCH REFERENCES

ALR. — Judicial review of decision upon application for license to practice

within state by physician or surgeon from another state or country, 136 ALR 742.

43-35-14. Examination of applicants.

The board may require applicants to be examined upon the subjects required for the practice of podiatric medicine. Any standardized examination which the board shall approve may be administered to all applicants in lieu of or in conjunction with any other examination which the board may require. (Code 1981, § 43-35-14, enacted by Ga. L. 1994, p. 1375, § 1; Ga. L. 2010, p. 266, § 38/SB 195.)

The 2010 amendment, effective May 20, 2010, in the first sentence, substituted "may require applicants to be examined" for "shall examine applicants" near the beginning and deleted "at least twice each year and shall use any method or procedure which the board deems necessary to test the applicant's qualifications to practice podiatric medicine" following "medi-

cine" at the end; and substituted "may require" for "shall administer" at the end of the last sentence.

Administrative rules and regulations. — Examination and licensure requirements, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Podiatry Examiners, Chapter 500-2.

43-35-15. Renewal of licenses; continuing education requirements.

(a) Licenses shall expire biennially. All applications for renewal of a license shall be filed with the division director prior to the expiration date, accompanied by the renewal fee prescribed by the board.

(b)(1) In order to maintain and enhance the professional competence of podiatrists licensed under the provisions of this chapter and for the protection of the health and welfare of the people of this state:

(A) As a requirement for the biennial renewal of his or her license, a podiatric physician must submit proof to the board of the

completion of not less than 50 hours of approved continuing education in the preceding two years;

(B) A podiatrist licensed by reciprocity under Code Section 43-35-13 or by examination during the first six months of the biennial licensing cycle, September through February, shall be required to obtain the full 50 hours of continuing education; if licensed during the following 12 months, March through February, the podiatrist shall be required to obtain 30 hours of continuing education; if licensed during the last six months, March through August, the podiatrist shall be exempt from continuing education requirements for that biennial licensing cycle.

(2) In lieu of individual state regulations, the board will recognize for continuing education purposes all providers and sponsors of programs approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association. (Code 1981, § 43-35-15, enacted by Ga. L. 1994, p. 1375, § 1; Ga. L. 2000, p. 1706, § 19.)

Administrative rules and regulations. — Renewal of licenses, Official Compilation of the Rules and Regulations

of the State of Georgia, State Board of Podiatry Examiners, Chapter 500-4.

43-35-16. Suspension, revocation, cancellation, or denial of license; other discipline; judicial review; reinstatement; immunity; failure of licensee to appear; voluntary surrender of license.

(a) The board shall, after notice and opportunity for hearing, have the power to suspend, revoke, or cancel the license of, or refuse to grant, renew, or restore a license to, any licensee or applicant for a license upon proof of any one of the following grounds:

(1) Employment of fraud or deception or cheating in applying for a license or in taking an examination for a license;

(2) Failing to demonstrate the qualifications or standards for a license as provided by this chapter;

(3) Knowingly making a misleading, deceptive, false, or fraudulent representation concerning the practice of podiatry or in any document connected therewith, or practicing fraud or deceit or cheating or intentionally making any false statement in taking an examination or in obtaining a license to practice podiatry or intentionally making any false statement in any document submitted to the board;

(4) Conviction of a felony in this state or any other state, territory, or country which, if committed in this state, would be deemed a felony without regard to its designation elsewhere. For this purpose, a conviction shall include a finding or verdict of guilt, a plea of guilty,

or a plea of nolo contendere in a criminal proceeding, regardless of whether an adjudication of guilt or sentence is entered thereon;

(5) Commission of a crime involving moral turpitude within this state or within any other state, territory, or country which, if committed in this state, would be deemed a crime involving moral turpitude without regard to its designation elsewhere where:

(A) A plea of nolo contendere was entered to the charge;

(B) First offender treatment was granted pursuant to the charge, without adjudication of guilt; or

(C) An adjudication or sentence was otherwise withheld or not entered on the charge;

(6) Revocation, suspension, or annulment of a license to practice podiatric medicine by any lawful licensing authority in any state, territory, or country, or any other disciplinary action taken against a licensee by any lawful licensing authority, or having been denied a license by any other licensing authority;

(7) Advertising for or soliciting patients by any means other than as provided by the rules and regulations of the board;

(8) The displaying of an inability to practice podiatric medicine with reasonable skill and safety to patients or having become unable to practice podiatric medicine with reasonable skill and safety to patients by reason of illness, the use of alcohol or drugs, narcotics, chemicals, or any other substance or as a result of any mental or physical condition. In enforcing this paragraph, the board may, upon reasonable grounds, require a licensee or applicant to submit to a mental or physical examination by physicians designated by the board. The results of such examination shall be admissible in any hearing before the board, notwithstanding any claim of privilege under a contrary rule of law or statute. Every person who shall accept the privilege of practicing podiatric medicine in this state or who shall file an application for a license to practice podiatric medicine in this state shall be deemed to have given his or her consent to submit to such mental or physical examination and to have waived all objections to the admissibility of the results in any hearing before the board upon the grounds that the same constitutes a privileged communication. If the licensee or applicant fails to submit to such an examination when properly directed to do so by the board, unless such failure was due to circumstances beyond his or her control, the board may enter a final order upon proper notice, hearing, and proof of such refusal;

(9) Flagrant immorality;

(10) Practicing under a false name or the impersonation of another person except as may be permitted by the laws of this state and rules and regulations of the board concerning professional corporations or associations;

(11) In light of the condition of the patient at the time of prescription, knowingly prescribing controlled substances or any other medication without a legitimate medical purpose or knowingly overprescribing controlled substances or other medications or chemicals;

(12) Division of fees for professional services with any person, firm, association, or corporation for bringing or referring a patient;

(13) Engaging in any unprofessional, unethical, deceptive, or delinquent conduct or practice harmful to the public, which need not have resulted in actual injury to any person, and shall also include departure from, or the failure to conform to, the minimum prevailing standards for the practice of podiatric medicine in this state; or

(14) Violating any other standard of professional conduct as may be prescribed by the board.

(b) Upon a finding of the board that the public health, safety, or welfare imperatively requires emergency action and incorporating a finding to that effect in an order, summary suspension of a license may be ordered pending proceedings for revocation or other action, which proceedings shall be promptly instituted and determined.

(c) Upon a finding by the board that a license should be denied or sanctioned pursuant to subsection (a) of this Code section, the board may take any one or more of the following actions:

(1) Deny a license to an applicant or refuse to renew a license;

(2) Administer a public reprimand;

(3) Suspend any license for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said license;

(4) Limit or restrict any license as the board deems necessary for the protection of the public;

(5) Revoke any license;

(6) Condition the penalty or withhold formal disposition upon applicant's or licensee's submission to such care, counseling, or treatment as the board may direct; or

(7) In addition to and in conjunction with the actions provided for in this subsection, may make a finding adverse to the licensee or applicant but withhold imposition of judgment and penalty or may

impose the judgment and penalty but suspend the enforcement thereof and place a licensee on probation, which probation may be vacated upon noncompliance with such reasonable terms as the board may impose.

(d) Initial judicial review of a final decision of the board shall be had solely in the superior court of the county of domicile of the board.

(e) In its discretion, the board may reinstate a license which has been revoked or issue a license which has been denied or refused, following such procedures as the board may adopt by rule; and, as a condition thereof, the board may impose any disciplinary or corrective measure authorized by this chapter.

(f) The board shall have the authority to exclude all persons during its deliberations on disciplinary proceedings and to discuss any disciplinary matter in private with a licensee or applicant.

(g) A person, partnership, firm, corporation, association, authority, or other entity shall be immune from civil or criminal liability for reporting or investigating the acts or omissions of a licensee or applicant or for initiating or conducting proceedings against such licensee or applicant pursuant to the provisions of this chapter or any other provision of law relating to the licensee's or applicant's fitness to practice podiatric medicine, if such action is taken in good faith, without fraud or malice. Any person who testifies in good faith or who makes a recommendation to the board in the nature of peer review, in good faith, without fraud or malice, before the board in any proceeding concerning a violation of this chapter or any other law relating to the licensee's or applicant's fitness to practice podiatric medicine shall be immune from civil and criminal liability for so testifying, participating, or recommending.

(h) Neither a denial of a license on grounds other than those enumerated in subsection (a) of this Code section nor the issuance of a private reprimand nor the denial of a license by reciprocity nor the denial of a request for reinstatement of a revoked license shall be considered a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Notice and hearing within the meaning of Chapter 13 of Title 50 shall not be required, but the licensee or applicant shall be allowed to appear before the board if he or she so requests.

(i) If any licensee fails to appear at any hearing after reasonable notice, the board may proceed to hear evidence against such licensee and take action as if such licensee had been present. A notice of hearing, initial or recommended decision, or final decision of the board in a disciplinary proceeding shall be served upon the licensee or applicant by certified mail or statutory overnight delivery, return receipt re-

quested, to the last known address of record with the board. If such material is returned marked "unclaimed" or "refused" or is otherwise undeliverable and if the licensee or applicant cannot, after diligent effort, be located, the division director shall be deemed to be the agent for such service for such licensee or applicant for the purposes of this Code section; and service upon the division director shall be deemed to be service upon the licensee or applicant.

(j) The voluntary surrender of license shall have the same effect as a revocation of said license, subject to reinstatement in the discretion of the board. (Code 1981, § 43-35-16, enacted by Ga. L. 1994, p. 1375, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2000, p. 1706, §§ 18, 19.)

Cross references. — False or fraudulent advertising, § 10-1-420 et seq.

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assem-

bly, provides that the amendment to subsection (i) is applicable with respect to notices delivered on or after July 1, 2000.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 84-611 are included in the annotations for this Code section.

Representatives of shoe manufacturers may take plaster of paris casts of foot for purpose of making molded shoes. 1962 Op. Att'y Gen. p. 389 (decided under former Code 1933, § 84-611).

Podiatrists may incorporate and advertise in corporate name. — Members of the podiatry profession may incorporate and practice podiatry in corporate form; a podiatry corporation is permitted to advertise by use of its corporate name by means and by methods prescribed by statute. 1970 Op. Att'y Gen. No. 70-107 (decided under former Code 1933, § 84-611).

Practicing podiatrist may not use name of nonpracticing podiatrist in connection with practice; such use would tend to intentionally mislead and

deceive public which would controvert intention of the statute. 1970 Op. Att'y Gen. No. 70-90 (decided under former Code 1933, § 84-611).

Podiatrists may use telephone exchange or registry only as an answering service, not for referrals. — Proper use of a podiatrist telephone exchange or registry as a type of answering service for a practicing podiatrist is not precluded; misuse of such an exchange or registry occurs when one or more podiatrists in a given area pay a fee to a so-called "exchange" or "registry" and use those services as a referral service. 1970 Op. Att'y Gen. No. 70-90 (decided under former Code 1933, § 84-611).

Telephone listing print must be of standard size. — Statute limited type of print available for use by podiatrist in a telephone directory listing to that of standard size uniform print. 1970 Op. Att'y Gen. No. 70-90 (decided under former Code 1933, § 84-611).

RESEARCH REFERENCES

ALR. — Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 ALR 1388.

Practicing medicine, surgery, dentistry, optometry, podiatry, or other healing arts

without license as a separate or continuing offense, 99 ALR2d 654.

Pretrial discovery in disciplinary proceedings against physician, 28 ALR3d 1440.

Criminal prosecution or disciplinary action against medical practitioner for fraud in connection with claims under Medicaid, Medicare, or similar welfare program for providing medical service, 50 ALR3d 549; 70 ALR4th 132.

Practices forbidden by state deceptive trade practice and consumer protection acts, 89 ALR3d 449.

Physician's or other healer's conduct, or conviction of offense not directly related to medical practice, as ground for disciplinary action, 34 ALR4th 609.

Podiatry or chiropody statutes: validity,

construction, and application, 45 ALR4th 888.

Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer, 59 ALR4th 1104.

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner, 70 ALR4th 132.

Rights as to notice and hearing in proceeding to revoke or suspend license to practice medicine, 10 ALR5th 1.

43-35-17. Practice without license deemed public nuisance; injunctions.

The practice of podiatric medicine is declared to be an activity affecting the public interest and involving the health, safety, and welfare of the public. Such practice when engaged in by a person who is not licensed under the provisions of this chapter is declared to be a public nuisance, harmful to the public health, safety, and welfare. The board, or the district attorney of the district where such nuisance exists, may bring a petition to restrain and enjoin such unlicensed practice in the appropriate court of the county where such unlicensed person resides. It shall not be necessary in order to obtain an injunction under this Code section to allege or prove that there is no adequate remedy at law. (Code 1981, § 43-35-17, enacted by Ga. L. 1994, p. 1375, § 1.)

43-35-18. Criminal penalty.

Any person who violates any provision of this chapter shall be guilty of a felony and upon conviction thereof shall be punished by a fine of not less than \$500.00 nor more than \$1,000.00 or by imprisonment from two to five years or both. (Code 1981, § 43-35-18, enacted by Ga. L. 1994, p. 1375, § 1.)

CHAPTER 36

POLYGRAPH EXAMINERS

43-36-1 through 43-36-22.

Reserved. Repealed by Ga. L. 1994, p. 744, § 1, effective July 1, 1994.

Editor's notes. — This chapter was based on Ga. L. 1968, p. 1217, §§ 1-11 and 16; Ga. L. 1971, p. 651, §§ 1-3; Ga. L. 1980, p. 57, § 1; Ga. L. 1981, p. 1582, §§ 1, 2; Ga. L. 1985, p. 1008, § 1; Ga. L. 1986, p. 10, § 43; Ga. L. 1987, p. 370, §§ 1, 2; Ga. L. 1989, p. 797, §§ 1-5; Ga. L. 1992, p. 3137, § 29.

CHAPTER 37

DEALERS IN PRECIOUS METALS AND GEMS

Sec.		Sec.	
43-37-1.	Definitions.		required; time of report; form; preservation; accessibility.
43-37-2.	Registration procedure; felony conviction; fee; renewal.	43-37-5.	Local requirements.
43-37-3.	Permanent records required; content.	43-37-6.	Unlawful acts; penalty.
43-37-4.	Written reports of purchases	43-37-7.	Exemptions.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law,

§ 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

Withdrawal of property from auction sale, 37 ALR2d 1049.

Regulation and licensing of jewelry auctions, 53 ALR2d 1433.

43-37-1. Definitions.

As used in this chapter, the term:

(1) "Dealer in precious metals or gems" means:

(A) Any person engaged in the business of purchasing precious metals or gems or goods made from precious metals or gems from persons or sources other than manufacturers, manufacturers' representatives, or other dealers in precious metals or gems; or

(B) A person engaged in any other business if, in conjunction with such business, precious metals or gems or goods made from precious metals or gems are purchased from persons or sources other than manufacturers, manufacturers' representatives, or other dealers in precious metals or gems where such purchase is for resale in its original form or as changed by remounting, melting, re-forming, remolding, or recasting or for resale as scrap or in bulk.

(2) "Gems" means any precious or semiprecious stone which is cut and polished.

(3) "Numismatic coins" means coins whose value as collectors' items exceeds the value of the content of the precious metals in the coins.

(4) "Person" means an individual, partnership, corporation, joint venture, trust, association, or any other legal entity however organized.

(5) "Precious metals" means gold, silver, or platinum or any alloy containing gold, silver, or platinum. (Ga. L. 1981, p. 1570, § 1; Ga. L. 1982, p. 1504, §§ 1, 5.)

43-37-2. Registration procedure; felony conviction; fee; renewal.

(a)(1) The law enforcement officer designated to administer the provisions of this chapter and register dealers in precious metals or gems in each county shall be the sheriff, unless the county has a county police department, in which case it will be the chief of the county police department.

(2) The law enforcement officer designated to administer the provisions of this chapter and register dealers in precious metals or gems in each municipality shall be the chief of police of the municipality.

(b) No person shall engage in business as a dealer in precious metals or gems until he has registered as a dealer in precious metals or gems for each separate place of business. The registration shall be in writing and shall be sworn to or affirmed by the dealer in precious metals or gems. If the dealer's place of business is located within a municipality, the dealer shall register with the chief of police of the municipality. If the dealer's place of business is not located within a municipality, the dealer shall register with the sheriff of the county unless the county has a county police department, in which event the dealer shall register with the county police department. As to any registration with the chief of police of a municipality or a county police department, a copy of each registration shall be transmitted by such chief of police to the sheriff of the county within seven days of the registration. The sheriff of the county shall maintain a record of all registrations, which record shall be available for public inspection.

(c) The registration shall contain the name, address, and age of the dealer together with the names, addresses, and ages of all other persons having an ownership interest or actually employed in the business other than publicly held corporations.

(d) No person shall be eligible to register as a dealer in precious metals or gems if any employee or stockholder, other than stockholders owning less than 10 percent of the outstanding shares of a publicly held corporation, has been convicted of a felony under the laws of this state or any other state or the United States. This subsection shall not apply to any person who has been convicted of a felony after ten years have expired from the date of completion of the felony sentence.

(e) All registrations shall contain the address of the premises upon which the business is conducted and the zoning and planning classification of the premises.

(f) Each dealer shall be required to notify the appropriate law enforcement officer of the county or the municipality in which the dealer is registered within seven calendar days of any change of address of the dealer or business or any change of ownership in the business. As to any notification of the chief of police of a municipality or a county police department, a copy of the change of address or ownership in the business shall be transmitted to the sheriff of the county within seven days of the notification.

(g) Each applicant for registration shall possess a current business license in the county or municipality or shall pay an initial registration fee of \$25.00 to be retained by the county or municipality to cover the cost of registering such persons. The registration shall be renewed annually upon presentation of a current business license by the dealer or by payment of a renewal fee of \$10.00.

(h) Nothing in this Code section shall be construed so as to authorize any person to transact business as a dealer in precious metals and gems without purchasing a current business license if so required by the county or municipality. (Ga. L. 1981, p. 1570, § 2; Ga. L. 1982, p. 3, § 43; Ga. L. 1982, p. 1504, §§ 2, 6.)

Law reviews. — For article surveying mid-1981, see 33 Mercer L. Rev. 187 developments in Georgia local government law from mid-1980 through (1981).

JUDICIAL DECISIONS

Cited in Worley v. State, 201 Ga. App. 795, 412 S.E.2d 845 (1991).

43-37-3. Permanent records required; content.

(a) Every dealer in precious metals or gems shall maintain a book, in permanent form, in which shall be entered at the time of each purchase of precious metals or gems or goods made from precious metals or gems the following:

- (1) The date and time of the purchase;
- (2) The name of the person making the purchase from the seller;
- (3) The name, age, and address of the seller of the items purchased and the distinctive number from such seller's driver's license or other similar identification card containing a photo of the seller;
- (4) A clear and accurate identification and description of the purchased goods, including the serial, model, or other number, and all identifying marks inscribed thereon;
- (5) The price paid for the goods purchased;
- (6) The number of the check issued for the purchase price, if payment is made by check; and
- (7) The signature of the seller.

(b) The permanent record book required by this Code section shall be in legible English. Entries shall appear in chronological order. No blank lines may be left between entries. No obliterations, alterations, or erasures may be made. Corrections shall be made by drawing a line of ink through the entry without destroying its legibility. The book shall be maintained for each purchase of precious metals or gems or goods made from precious metals or gems for at least two years. The book shall be open to the inspection of any duly authorized law enforcement officer during the ordinary hours of business or at any reasonable time.

(c) Dealers exclusively engaged in buying or exchanging for merchandise scrap dental gold and silver from licensed dentists by registered or certified mail or statutory overnight delivery may record the post office record of the mailed parcel in lieu of the seller's age and driver's license number as required in paragraph (3) of subsection (a) of this Code section and in lieu of the seller's signature as required in paragraph (7) of subsection (a) of this Code section. (Ga. L. 1981, p. 1570, § 3; Ga. L. 2000, p. 1589, § 3.)

Cross references. — Reports to judge of probate court by persons purchasing native gold, gold bullion, § 12-4-120 et seq.

Editor's notes. — Ga. L. 2000, p. 1589,

§ 16, not codified by the General Assembly, provides that the amendment to subsection (c) is applicable with respect to notices delivered on or after July 1, 2000.

JUDICIAL DECISIONS

Cited in *Worley v. State*, 201 Ga. App. 795, 412 S.E.2d 845 (1991).

43-37-4. Written reports of purchases required; time of report; form; preservation; accessibility.

(a) Every dealer in precious metals or gems shall make a report in writing to the appropriate law enforcement officer of the county or municipality in which he is registered, on forms approved or prescribed by the appropriate law enforcement officer of the county or the municipality, of all precious metals or gems or goods made from precious metals or gems purchased on the day previous to the date of the report. The report shall contain the information specified in paragraphs (1) through (5) of subsection (a) of Code Section 43-37-3 and shall be typewritten or handwritten in legible English and mailed or delivered to the appropriate law enforcement officer of the county or the municipality within 24 hours after the day on which the transactions occurred.

(b) All reports shall be maintained in a locked container under the direct supervision of the appropriate law enforcement officer of the county or municipality and shall be available for inspection only for law enforcement purposes.

(c) The appropriate law enforcement officer of the county or municipality may, in his discretion, authorize any person who demonstrates theft of precious metals or gems by the presenting of an incident report or other similar document to inspect the reports in an effort to locate stolen property. (Ga. L. 1981, p. 1570, § 4; Ga. L. 1982, p. 1504, §§ 3, 7.)

Cross references. — Reports to judge of probate court by persons purchasing native gold, gold bullion, § 12-4-120 et seq.

developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

Law reviews. — For article surveying

43-37-5. Local requirements.

No provision of this chapter shall be construed as prohibiting or preventing a county or municipality from licensing dealers in precious metals or gems or from establishing and imposing additional requirements or qualifications on dealers in precious metals or gems. (Ga. L. 1981, p. 1570, § 7.)

43-37-6. Unlawful acts; penalty.

(a) It shall be unlawful for any dealer in precious metals or gems or any agent or employee of a dealer in precious metals or gems who makes purchases of precious metals or gems or of goods made from precious metals or gems to:

(1) Make any false statement in the registration provided for in Code Section 43-37-2;

(2) Fail to maintain and make entries in the permanent record book as required by Code Section 43-37-3;

(3) Make any false entry in such permanent record book;

(4) Falsify, obliterate, destroy, or remove from the place of business such permanent record book;

(5) Refuse to allow any duly authorized law enforcement officer to inspect such permanent record book, or any precious metals or gems or goods made from precious metals or gems in his possession, during the ordinary hours of business or at any reasonable time;

(6) Sell, exchange, or remove from the legal possession of the buyer, or to alter the form of, any precious metals or gems or goods made from precious metals or gems purchased by remounting, melting, cutting up, or otherwise altering the original form until at least seven calendar days have elapsed from the time of purchase or acquisition;

(7) Fail to make the written report as required in Code Section 43-37-4; or

(8) Purchase any precious metals or gems from any person under 17 years of age.

(b) It shall be unlawful for any person to advertise or transact business as a dealer in precious metals or gems without first registering pursuant to Code Section 43-37-2.

(c) It shall be unlawful for any dealer in precious metals or gems to purchase precious metals in a melted or smelted state unless the purchase is from a registered dealer in precious metals or gems.

(d) If the appropriate law enforcement officer of the county or municipality has probable cause to believe that precious metals or gems have been stolen, he may give notice in writing to the dealer to retain the precious metals or gems for an additional 15 days; and it shall be unlawful for the dealer to dispose of the property unless the notice is revoked in writing within the 15 day period.

(e) Any person who violates this Code section shall be guilty of a misdemeanor. (Ga. L. 1981, p. 1570, §§ 5, 6; Ga. L. 1982, p. 1504, §§ 4, 8.)

43-37-7. Exemptions.

This chapter shall not apply to dealers exclusively engaged in the sale or exchange of numismatic coins or to transactions exclusively involving numismatic coins or other coinage. (Ga. L. 1981, p. 1570, § 8.)

CHAPTER 38

OPERATORS OF PRIVATE DETECTIVE BUSINESSES
AND PRIVATE SECURITY BUSINESSES

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|------------|---|-------------|---|
| Sec. | | Sec. | |
| 43-38-1. | Short title. | 43-38-10. | Permits to carry firearms; proficiency requirement; exemption from specified laws; denial, refusal to renew, and suspension of permits; effect of license suspension and restoration. |
| 43-38-2. | Declaration of purpose. | 43-38-10.1. | Training instructors and training programs. |
| 43-38-3. | Definitions. | 43-38-11. | Denial, revocation, or sanction of licenses and registrations; action by board; judicial review. |
| 43-38-4. | Creation of board; members; secretary; records; general powers and duties. | 43-38-11.1. | Suspension of license, registration, or weapons permit. |
| 43-38-5. | Licensure and registration of persons practicing for one year on July 1, 1981 [Repealed]. | 43-38-12. | Applicability of the "Georgia Administrative Procedure Act." |
| 43-38-6. | Licenses; qualifications; criminal records; fingerprints; bond, insurance, or net worth affidavit; display of license; suspension; temporary permits; license recognition agreements. | 43-38-13. | Arrest powers of licensees and registrants. |
| 43-38-7. | Licensing of armed employees; qualifications; continuing education; fingerprints; license card; suspension. | 43-38-14. | Exceptions to operation of chapter; local regulation. |
| 43-38-7.1. | Registration records of unarmed security employees; fingerprint identification of prospective registrants. | 43-38-14.1. | Restrictions on local business licenses. |
| 43-38-8. | Temporary employees. | 43-38-15. | Applicability of chapter. |
| 43-38-9. | Disposition of applicants' fingerprints. | 43-38-16. | Penalty. |
| | | 43-38-17. | Termination [Repealed]. |

JUDICIAL DECISIONS

Cited in Adler's Package Shop, Inc. v. Parker, 190 Ga. App. 68, 378 S.E.2d 323 (1989).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72

Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law,

§ 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative

Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Performance of public duty by off-duty police officer acting as private security guard, 65 ALR5th 623.

43-38-1. Short title.

This chapter shall be known and may be cited as the “Georgia Private Detective and Security Agencies Act.” (Ga. L. 1973, p. 40, § 1; Ga. L. 1981, p. 1828, § 1.)

RESEARCH REFERENCES

ALR. — Security guard company’s liability for negligent hiring, supervision, retention, or assignment of guard, 44 ALR4th 620.

Actions of security service company’s employee as rendering company liable under contract to protect persons or property, 83 ALR4th 1150.

43-38-2. Declaration of purpose.

This chapter is enacted for the purpose of safeguarding the citizens of this state by regulation of the private detective and private security businesses. The regulation of such businesses is declared to be in the public interest; and this chapter shall be liberally construed so as to accomplish the foregoing purpose. (Ga. L. 1981, p. 1828, § 1.)

JUDICIAL DECISIONS

Cited in *Kirk & Assocs. v. McClellan*, 214 Ga. App. 685, 448 S.E.2d 764 (1994).

43-38-3. Definitions.

As used in this chapter, the term:

(1) “Board” means the Georgia Board of Private Detective and Security Agencies, a professional licensing board.

(2) “Law enforcement agency” means an agency responsible for ensuring compliance with the laws and ordinances enacted by federal, state, and local governing authorities.

(3) “Private detective business” means the business of obtaining or furnishing, or accepting employment to obtain or to furnish, information with reference to:

(A) Crimes or wrongs done or threatened against the United States of America or any state or territory thereof;

(B) The background, identity, habits, conduct, business, employment, occupation, assets, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person;

(C) The location, disposition, or recovery of lost or stolen property;

(D) The cause or responsibility for fires, libels, losses, accidents, damage, or injury to persons or property;

(E) The securing of evidence in the course of the private detective business to be used before any court, board, officer, or investigating committee; or

(F) The protection of individuals from serious bodily harm or death.

(4) "Private security business" means engaging in the business of, or accepting employment to provide, any or all of the following:

(A) Private patrol service;

(B) Watchman service;

(C) Guard service;

(D) Armored car service; or

(E) The protection of persons from death or serious bodily harm. (Ga. L. 1973, p. 40, § 2; Ga. L. 1981, p. 1828, § 2; Ga. L. 2000, p. 1161, § 1; Ga. L. 2000, p. 1706, § 15.)

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, all of the pre-1991 annotations are taken from opinions under Ga. L. 1973, p. 40, § 1 et seq., and are included in the annotations for this Code section.

"Private detective business" construed. — Persons or corporations which employ personnel who engage in activities covered by O.C.G.A. § 43-38-3(2) are required to be licensed by the State Board of Private Detective and Security Agencies, unless they are otherwise exempt pursuant to O.C.G.A. § 43-38-14. Persons or corporations which must be licensed are required to register their investigative personnel. 1991 Op. Att'y Gen. No. 91-34.

Licensing of labor unions. — Under

state law, a labor union may legally be licensed by the Georgia Board of Private Detective and Security Agencies to conduct a detective business, to conduct a private security business, or to perform security work on the union's own premises, provided that the union meets statutory requirements for licensure. 1976 Op. Att'y Gen. No. 76-125.

Psychological stress evaluators in business of evaluating character must be licensed. — Psychological stress evaluators who are engaged in the business of furnishing information with respect to a person's honesty, integrity, credibility, knowledge, and trustworthiness are engaged in the "private detective business" and must be registered or li-

censed by the Georgia Board of Private Detective and Private Security Agencies. 1976 Op. Att'y Gen. No. 76-36.

Full-time peace officers exempt only if charged by law to arrest. — Exemption from provisions of Ga. L. 1973, p. 40 given to certain peace officers extends only to those persons charged by law with duty to maintain public order or to make arrests for violations of the law, and who devote, on a regular basis, their full time to performance of such duties. 1974 Op. Att'y Gen. No. 74-148.

Security guards employed by Atlanta Housing Authority are not subject to provisions of Ga. L. 1973, p. 40, because employees of the Atlanta Housing Authority are employees of a political subdivision of this state. 1976 Op. Att'y Gen. No. 76-113.

Company employing only in-house investigative personnel need not ob-

tain license. — When a company employs only in-house investigative personnel, and consequently does not fall within the definition of a private detective business, the company is not required to obtain a license. 1979 Op. Att'y Gen. No. 79-21.

In-house investigators need not register. — In-house investigative personnel conducting investigations off employer's premises are not required to be registered by the Georgia Board of Private Detective and Security Agencies. This exemption from registration applies only to those in-house investigators who are employed exclusively and regularly by only one employer; their investigations are in connection with the employer's affairs, and the employer is not in the private detective business. 1979 Op. Att'y Gen. No. 79-21.

43-38-4. Creation of board; members; secretary; records; general powers and duties.

(a) There is created the Georgia Board of Private Detective and Security Agencies. The board shall consist of seven members, each of whom shall be appointed by the Governor. Each member shall serve for a term of four years. Four members shall be engaged in the contract private detective or contract private security business and shall have at least four years of experience in such business immediately preceding their appointment; provided, however, that on and after October 1, 1987, at least two members shall be engaged in the contract private security business. Two members shall be engaged in state, county, or municipal law enforcement and shall have at least four years of experience in governmental law enforcement immediately preceding their appointment. One member shall be appointed from the public at large. At the first meeting of the board held each year, the members shall elect a chairman to serve for one year. The Governor may remove any member of the board for neglect of duty, incompetence, or other unethicial or dishonorable conduct. After such removal or after the creation of a vacancy due to death, resignation, or ineligibility, the Governor shall appoint a successor to serve the unexpired term. Appointees to the board shall, immediately after their appointment, take and subscribe to a written oath or affirmation required by law for all public officers.

(b) The members of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.

(c) The division director shall be the secretary of the board and shall perform such administrative duties as may be prescribed by the board. All official records of the board or affidavits by the division director as to the content of such records shall be prima-facie evidence of all matters required to be kept therein.

(d) In addition to any authority otherwise granted by this chapter and subject to the laws relating to the division director, the board shall have the following powers and duties:

(1) To determine the qualifications of applicants for licenses or registration under this chapter;

(2) To investigate alleged violations of this chapter or any rules and regulations adopted by the board, including the power to conduct inspections of a licensee's employee lists and training records;

(3) To promulgate all rules and regulations necessary to carry out this chapter;

(4) To establish and enforce standards governing the conduct of persons licensed and registered under this chapter;

(5) To maintain in its name an action for injunctive or other appropriate legal or equitable relief to remedy violations of this chapter. In pursuing equitable remedies, it shall not be necessary that the board allege or prove that it has no adequate remedy at law. It is declared that violations of this chapter are a menace and a nuisance and are dangerous to the public health, safety, and welfare;

(6) To recommend to the division director the employment or appointment of such personnel, including, but not limited to, inspectors, as may be necessary to assist the board in exercising and performing any and all the powers, duties, and obligations set forth in this chapter;

(7) To require a licensee to maintain and keep such records as are subject to inspection under this chapter;

(8) To issue, renew, deny, suspend, or revoke licenses, certificates, registrations, or permits in a manner consistent with this chapter;

(9) To hold hearings on all matters properly brought before it and, in connection therewith, to administer oaths, receive evidence, make the necessary determinations, and enter orders consistent with the findings; and

(10) To develop and apply such techniques which may include examinations as may be deemed necessary to assure that applicants licensed, registered, or issued weapons permits have the requisite skills and qualifications. (Ga. L. 1973, p. 40, § 3; Ga. L. 1981, p. 1828,

§ 3; Ga. L. 1987, p. 1400, § 1; Ga. L. 1994, p. 97, § 43; Ga. L. 2000, p. 1706, § 19.)

Administrative rules and regulations. — Rules of the profession, Official Compilation of the Rules and Regulations

of the State of Georgia, Rules of Georgia Board of Private Detective and Private Security Agencies, Chapter 509-1 et seq.

JUDICIAL DECISIONS

Criminal propensities of employees. — Employer's submission of uncontroverted evidence that the employer did not know of the employer's security guard's criminal propensities after investigating the guard's criminal and

employment record entitled the employer to summary judgment in a wrongful death action arising out of a murder in which the guard was a participant. *Kelley v. Baker Protective Servs., Inc.*, 198 Ga. App. 378, 401 S.E.2d 585 (1991).

43-38-5. Licensure and registration of persons practicing for one year on July 1, 1981.

Reserved. Repealed by Ga. L. 1987, p. 1400, § 2, effective July 1, 1987.

Editor's notes. — This Code section was based on Ga. L. 1981, p. 1828, § 4; Ga. L. 1986, p. 751, § 1.

43-38-6. Licenses; qualifications; criminal records; fingerprints; bond, insurance, or net worth affidavit; display of license; suspension; temporary permits; license recognition agreements.

(a) Any individual, firm, association, company, partnership, limited liability company, or corporation desiring to engage in the private detective or private security business in this state shall make a verified application to the division director for a license therefor. If the applicant is a firm, association, company, partnership, limited liability company, or corporation, the person filing the application on behalf of such firm, association, company, partnership, limited liability company, or corporation shall be a corporate officer of such corporation or an officer of such firm, association, partnership, or limited liability company; and such individual shall meet the qualifications set out in this Code section.

(b) Upon being satisfied of the good character, competency, and integrity of an applicant for licensure under this chapter or, if the applicant is a firm, association, company, partnership, limited liability company, or corporation, upon being satisfied of the good character, competency, and integrity of the corporate officer of such corporation or officer of such firm, association, partnership, or limited liability company, the board may grant a license to conduct a private detective or

private security business to such individual, firm, association, company, partnership, limited liability company, or corporation if:

(1) The applicant is at least 18 years of age;

(2) The applicant is a citizen of the United States or a registered resident alien;

(3) The applicant is of good moral character;

(4) The applicant has not been convicted of a felony or any crime involving the illegal use, carrying, or possession of a dangerous weapon or any crime involving moral turpitude; provided, however, that, if the applicant has been convicted of such crime, or has entered a plea of nolo contendere, or has entered a plea pursuant to Article 3 of Chapter 8 of Title 42 or otherwise been granted first offender treatment, the board may inquire into the nature of the crime, the date of conviction or plea, and other underlying facts and circumstances surrounding such criminal proceedings and, in its discretion, may grant a license to such applicant;

(5) The applicant has not committed an act constituting dishonesty or fraud;

(6) The applicant has satisfied the board that his or her private detective or private security business has a competent training officer and adequate training program with a curriculum approved by the board or that adequate training will be obtained from such other source as the board may approve;

(7) The applicant for a private detective company license has had at least two years' experience as an agent registered with a licensed detective agency, or has had at least two years' experience in law enforcement, or has a four-year degree in criminal justice or a related field from an accredited university or college; and the applicant for a security company license has had at least two years' experience as a supervisor or administrator in in-house security operations or with a licensed security agency, or has had at least two years' experience in law enforcement, or has a four-year degree in criminal justice or a related field from an accredited university or college;

(8) The applicants for private detective company licenses and security company licenses may be required to pass successfully a written examination as the board may prescribe; and

(9) The applicant meets such other qualifications as the board may prescribe by rule.

(c) The application for a license shall be made under oath on a form to be furnished by the division director. The application shall state the applicant's full name, age, date and place of birth; residences and

employment within the past five years, with the names and addresses of employers; present occupation; date and place of conviction or arrest for any crime, including the plea of nolo contendere or a plea entered pursuant to Article 3 of Chapter 8 of Title 42 or other first offender treatment; and such additional information as the board may require to investigate the qualifications, character, competency, and integrity of the applicant. Each applicant shall submit with the application two complete sets of fingerprints on forms specified and furnished by the board and one photograph, two inches wide by three inches high, full face, taken within six months prior to the application; provided, however, that the board may waive the submission of fingerprints and photograph for any employee who has been employed by a person licensed under this chapter within the previous 12 months. The application shall contain such additional documentation as the board may prescribe by rule. The board shall have the discretion to deny a license to an applicant who fails to provide the information and supporting documentation required by this subsection.

(d)(1) In addition to the requirements enumerated in this Code section, each applicant for a license under this chapter shall provide satisfactory evidence to the board that the prospective licensee has posted or has made provision for the posting of a bond. The required bond shall be executed in favor of the state, in the amount of \$25,000.00, with a surety company authorized to do business in this state and conditioned to pay damages not to exceed the amount of such bond to any person aggrieved by any act of the principal named in such bond, which act is in violation of this chapter and would be grounds for denial, suspension, or revocation of a license under Code Section 43-38-11. Immediately upon the granting of a license, such bond shall be filed with the division director by the licensee and shall be approved by the division director as to form and as to the solvency of the surety. The prospective licensee may file the required bond with the division director prior to the granting of a license for the division director's approval as provided in this Code section. In lieu of the required bond, a prospective licensee may submit to the board evidence of a policy of liability insurance in an amount of not less than \$1 million insuring such prospective licensee against personal liability for damages arising out of acts of the insured or his employees. No licensee shall cancel or cause to be canceled a bond or liability insurance policy issued pursuant to this Code section unless the board is so informed in writing by certified mail or statutory overnight delivery at least 30 days prior to the proposed cancellation. In lieu of the required bond or liability insurance policy, the prospective licensee may submit a net worth affidavit, prepared using standard accounting procedures, which affidavit indicates that the prospective licensee has a net worth of more than \$50,000.00. The

board, in its discretion, may accept a financial affidavit in lieu of the bond or liability insurance policy required by this subsection. The board, in its discretion, may require licensees under this Code section to submit periodic financial updates to ensure continued financial responsibility. If the surety or licensee fails to submit, within ten days of the effective date of cancellation, a new bond or liability insurance policy or a net worth statement as outlined in this subsection, the board shall have the authority to revoke any license issued under this chapter.

(2) Licensees who have previously posted bonds or submitted net worth affidavits to comply with the provisions of this subsection may hereafter prove continued financial responsibility through the use of liability insurance policies in accordance with paragraph (1) of this subsection.

(e) Immediately upon receipt of a license certificate issued by the board pursuant to this chapter, the licensee shall post and at all times display such license in a conspicuous place at his place of business. A copy of the duplicate of the license certificate shall be conspicuously posted at each branch office.

(f) Notwithstanding any other provisions of this Code section, an applicant for a license shall agree that if such applicant makes a false statement in the application or if such applicant has been found to have been convicted of a felony and has not had all his or her civil rights restored pursuant to law, then the board shall be authorized to suspend any license granted to such applicant without a prior hearing as required in Code Section 43-38-11. Upon request, any such person shall be entitled to a hearing on such matter subsequent to the suspension.

(g) The board may grant a license provided in this Code section to a person who is licensed in another state or territory of the United States which has licensing requirements substantially similar to the licensing requirements provided in this Code section.

(h) The board may issue a temporary permit for not longer than 30 days to any person who is licensed in another state or territory of the United States which has licensing requirements substantially similar to the licensing requirements provided in this Code section if such person, in the course of an investigation which arose in the state in which he or she is licensed, finds it necessary to conduct an investigation in this state. Such temporary permit shall be limited to the scope of such investigation. No more than one temporary permit shall be issued in any 12 month period.

(i) The board may, in its discretion and in accordance with regulations adopted by the board, enter into limited license recognition agreements with any other state or the District of Columbia having

licensure requirements substantially equal to the requirements provided by this chapter pursuant to which a person so licensed in such state or district may conduct an investigation in this state directly related to an investigation which was initiated outside of this state; provided, however, that such privilege shall be limited to 30 days for each agency for each such investigation. (Ga. L. 1973, p. 40, §§ 5-7; Ga. L. 1981, p. 1828, § 5; Ga. L. 1984, p. 1338, § 1; Ga. L. 1986, p. 751, § 2; Ga. L. 1987, p. 3, § 43; Ga. L. 1987, p. 1400, §§ 3-5; Ga. L. 1988, p. 13, § 43; Ga. L. 1991, p. 1027, § 1; Ga. L. 1993, p. 123, § 43; Ga. L. 1994, p. 291, § 1; Ga. L. 2000, p. 1161, §§ 2, 3; Ga. L. 2000, p. 1589, § 3; Ga. L. 2000, p. 1706, § 19; Ga. L. 2001, p. 1075, § 1; Ga. L. 2010, p. 266, § 39/SB 195.)

The 2010 amendment, effective May 20, 2010, deleted “in writing” following “application” near the end of the first sentence of subsection (a); substituted “under oath” for “in writing, under oath,” in the middle of the first sentence of subsection (c); and deleted “in writing on the application” following “agree” near the

middle of the first sentence of subsection (f).

Editor’s notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to paragraph (d)(1) is applicable with respect to notices delivered on or after July 1, 2000.

JUDICIAL DECISIONS

Independent contractor relationships are permitted under the Private Detective and Securities Agencies Act, O.C.G.A. § 43-38-1 et seq., subject to the Act’s licensing requirements. *Kirk & Assocs. v. McClellan*, 214 Ga. App. 685, 448 S.E.2d 764 (1994).

In an action arising out of an automo-

bile accident against a driver and a private detective agency alleging that the agency was liable for the negligence of the driver under the theory of respondeat superior, the agency could claim and prove that the driver was an independent contractor. *Kirk & Assocs. v. McClellan*, 214 Ga. App. 685, 448 S.E.2d 764 (1994).

OPINIONS OF THE ATTORNEY GENERAL

Psychological stress evaluators in business of evaluating character must register as detectives. — Psychological stress evaluators who are engaged in the business of furnishing information with respect to a person’s honesty, integrity, credibility, knowledge, and trustworthiness are engaged in the “private detective business” and must be registered or licensed by the Georgia Board of Private Detective and Private Security Agencies. 1976 Op. Att’y Gen. No. 76-36.

Company employing only in-house investigative personnel need not obtain license. — When a company employs only in-house investigative person-

nel, and consequently does not fall within the definition of a private detective business, the company is not required to obtain a license. 1979 Op. Att’y Gen. No. 79-21.

In-house investigators need not register. — In-house investigative personnel conducting investigations off an employer’s premises are not required to be registered by the Georgia Board of Private Detective and Security Agencies. This exemption from registration applies only to those in-house investigators who are employed exclusively and regularly by only one employer; their investigations are in connection with the employer’s affairs,

and the employer is not in the private detective business. 1979 Op. Att'y Gen. No. 79-21.

Under state law, a labor union may legally be licensed by the Georgia Board of Private Detective and Security Agencies to conduct a detective business, to conduct a private security business, or to perform security work on the union's own premises, provided that the union meets statutory requirements for licensure. 1976 Op. Att'y Gen. No. 76-125.

Board's right to issue licenses before fingerprint report. — While fingerprints of applicants for licensure and registration must be forwarded to certain state and federal agencies, the Georgia Board of Private Detective and Security Agencies may, in the Board's discretion, issue such licenses and registrations prior to receiving responses from these agencies. 1975 Op. Att'y Gen. No. 75-100.

43-38-7. Licensing of armed employees; qualifications; continuing education; fingerprints; license card; suspension.

(a) Any employer may employ as many agents, guards, watchmen, or patrolmen as he or she deems necessary for the conduct of his or her business, provided that such employees meet the requirements and qualifications for licensure under this chapter.

(b)(1) Except as provided in paragraph (2) of this subsection, within 180 days of completing board mandated prelicensure training, potential licensees shall make application to be licensed with the board.

(2) Any guard, watchman, or patrolman who will be unarmed and who will be employed in the private security business shall not be required to be licensed by the board but shall be governed by Code Section 43-38-7.1.

(c)(1) Except as otherwise provided in paragraph (2) of subsection (b) of this Code section, upon being satisfied of the applicant's character, competency, and eligibility for licensure, the board may license such applicant if he or she:

(A) Is at least 18 years of age;

(B) Is a citizen of the United States or a registered resident alien;

(C) Is of good moral character;

(D) Has not been convicted of a felony or any crime involving the illegal use, carrying, or possession of a dangerous weapon or any crime involving moral turpitude; provided, however, that, if the applicant has been convicted of such crime, or has entered a plea of nolo contendere to such crime, or has entered a plea pursuant to Article 3 of Chapter 8 of Title 42 or otherwise been granted first offender treatment, the board may inquire into the nature of the crime, the date of conviction or plea, and other underlying facts and circumstances surrounding such criminal proceedings and, in its discretion, may allow the applicant to be licensed;

(E) Has not committed an act constituting dishonesty or fraud; and

(F) Meets such other qualifications as the board may prescribe by rule.

(2) The board shall be authorized to require continuing education as a condition of renewal for all persons required to be licensed or registered with the board under this chapter. The board shall be authorized to promulgate rules and regulations addressing the requirement for continuing education and circumstances for which a waiver of this requirement may be granted.

(d) The license application shall be made under oath and on a form to be furnished by the division director. The application shall state the applicant's full name, age, and date and place of birth; residences and employment within the past five years; experience in the position applied for or held; the date and place of conviction or arrest for any crime, including the entry of a plea of nolo contendere or the entry of a plea entered pursuant to Article 3 of Chapter 8 of Title 42 or other first offender treatment; and such other information as the board may require. The license application shall be accompanied by two sets of fingerprints of the applicant and one photograph of the applicant, two inches wide by three inches high, full face, and taken within six months prior to the application. The board shall have discretion to deny a license to any individual when the information and supporting documentation required by this subsection are not provided.

(e) Upon granting a license pursuant to this Code section, the board shall so notify the licensee. An employer shall notify the board within 30 days of the hiring or termination of employment of any employee licensed under this Code section.

(f) Upon receipt of a license card issued by the board pursuant to this chapter, the licensee shall maintain said card on his person at all times while on his post or at his place of employment and at all times when the licensee wears a uniform in the course of his employment in the private detective or private security business.

(g) Notwithstanding any other provisions of this Code section, any person who is to be licensed under this Code section shall agree that if such person makes a false statement in the application or if such person is found to have been convicted of a felony and has not had all his or her civil rights restored pursuant to law, then the board shall be authorized to suspend any license granted to such person without a prior hearing as required in Code Section 43-38-11. Upon request, any such person shall be entitled to a hearing on such matter subsequent to the suspension. (Ga. L. 1973, p. 40, § 8; Ga. L. 1981, p. 1828, § 6; Ga. L. 1987, p. 1400, § 6; Ga. L. 1988, p. 13, § 43; Ga. L. 2000, p. 1161, § 4;

Ga. L. 2000, p. 1706, § 19; Ga. L. 2005, p. 787, § 1/HB 17; Ga. L. 2008, p. 324, § 43/SB 455; Ga. L. 2010, p. 266, § 40/SB 195; Ga. L. 2010, p. 391, § 2/SB 162; Ga. L. 2011, p. 752, § 43/HB 142.)

The 2010 amendments. — The first 2010 amendment, effective May 20, 2010, substituted “under oath” for “in writing, under oath,” in the middle of the first sentence of subsection (d); and deleted “in writing on the application” following “agree” near the beginning of subsection (g). The second 2010 amendment, effective May 24, 2010, rewrote this Code section.

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, revised punctuation in the first sentence of subsection (d).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, former subsection (c) was redesignated as present paragraph (c)(1), former paragraphs (c)(1) through (c)(6) was redesignated as present subparagraphs (c)(1)(A) through (c)(1)(F), and former paragraph (c)(7) was redesignated as present paragraph (c)(2); and, in subparagraph (c)(1)(F), a period was substituted for “; and” at the end.

Pursuant to Code Section 28-9-5, in 2010, “he” was substituted for “her” near the end of the introductory language in paragraph (c)(1).

OPINIONS OF THE ATTORNEY GENERAL

Under state law, a labor union may legally be licensed by the Georgia Board of Private Detective and Security Agencies to conduct a detective business, to conduct a private security business, or to perform security work on the union’s own premises, provided that the union meets statutory requirements for licensure. 1976 Op. Att’y Gen. No. 76-125.

Psychological stress evaluators in business of evaluating character must register as detectives. — Psychological stress evaluators who are engaged in the business of furnishing information with respect to a person’s honesty, integrity, credibility, knowledge, and trustworthiness are engaged in the “private detective business” and must be registered or licensed by the Georgia Board of Private Detective and Private Security Agencies. 1976 Op. Att’y Gen. No. 76-36.

Full-time peace officers charged with making arrests are exempt from requirements. — Exemption from provisions of this chapter given to certain peace officers extends only to those persons charged by law with duty to maintain public order or to make arrests for violations of the law, and who devote, on a regular basis, their full time to performance of such duties. 1974 Op. Att’y Gen. No. 74-148 (see O.C.G.A. Ch. 38, T. 43).

Security guards employed by Atlanta Housing Authority are not sub-

ject to provisions of this chapter because employees of the Atlanta Housing Authority are employees of a political subdivision of this state. 1976 Op. Att’y Gen. No. 76-113 (see O.C.G.A. Ch. 38, T. 43).

Company employing only in-house investigative personnel need not obtain license. — When a company employs only in-house investigative personnel, and consequently does not fall within the definition of a private detective business, the company is not required to obtain a license. 1979 Op. Att’y Gen. No. 79-21.

In-house investigators need not register. — In-house investigative personnel conducting investigations off the employer’s premises are not required to be registered by the Georgia Board of Private Detective and Security Agencies. This exemption from registration applies only to those in-house investigators who are employed exclusively and regularly by only one employer; their investigations are in connection with the employer’s affairs, and the employer is not in the private detective business. 1979 Op. Att’y Gen. No. 79-21.

Board may register before receiving fingerprint report from agencies. — While fingerprints of applicants for licensure and registration must be forwarded to certain state and federal agen-

cies, the Georgia Board of Private Detective and Security Agencies may, in the Board's discretion, issue such licenses and

registrations prior to receiving responses from these agencies. 1975 Op. Att'y Gen. No. 75-100.

43-38-7.1. Registration records of unarmed security employees; fingerprint identification of prospective registrants.

(a) Any individual, firm, association, company, partnership, limited liability company, or corporation engaged in the private security business and licensed pursuant to Code Section 43-38-6 shall be required to maintain registration records of all guards, watchmen, or patrolmen who are unarmed pursuant to rules and regulations of the board. A licensee shall not be required to register such unarmed employees with the board. Unarmed employees shall be required to complete a certain number of hours of training as prescribed by the board, and a record of such training shall be maintained with the registration records of such employees.

(b) The licensee shall forward fingerprints received from each prospective registrant to the Georgia Crime Information Center of the Georgia Bureau of Investigation for the purpose of criminal identification through the fingerprint system of identification established by the Georgia Bureau of Investigation and the fingerprint system of investigation established by the Federal Bureau of Investigation.

(c) It shall be the duty of the licensee to keep a record of all information received from the Georgia Bureau of Investigation and the Federal Bureau of Investigation with respect to criminal identification and to cooperate with the Georgia Bureau of Investigation, similar departments in other states, and the United States Department of Justice in any criminal identification system.

(d) At such times as the board may require, fingerprint cards of registrants may be periodically reprocessed by a licensee to identify criminal convictions subsequent to registration. (Code 1981, § 43-38-7.1, enacted by Ga. L. 1987, p. 1400, § 7; Ga. L. 1993, p. 123, § 44.)

JUDICIAL DECISIONS

Criminal propensities of employees. — Employer's submission of uncontroverted evidence that the employer did not know of the employer's security guard's criminal propensities after investigating the guard's criminal and

employment record entitled the employer to summary judgment in a wrongful death action arising out of a murder in which the guard was a participant. *Kelley v. Baker Protective Servs., Inc.*, 198 Ga. App. 378, 401 S.E.2d 585 (1991).

RESEARCH REFERENCES

ALR. — Actions of security service company's employee as rendering company liable under contract to protect persons or property, 83 ALR4th 1150.

43-38-8. Temporary employees.

Notwithstanding any other provisions of this chapter, any person or corporation may use temporary employees for special events, provided that such temporary employment does not exceed 30 days in a calendar year and such employees do not carry firearms in connection with such employment. (Ga. L. 1973, p. 40, § 9; Ga. L. 1981, p. 1828, § 7A; Ga. L. 1987, p. 1400, § 8.)

43-38-9. Disposition of applicants' fingerprints.

(a) The board shall forward the necessary fingerprints received from each prospective licensee and registrant required to be licensed or registered by the board under this chapter to the Georgia Crime Information Center or the Georgia Bureau of Investigation for the purpose of criminal identification through the fingerprint system of identification established by such bureau and the fingerprint system of investigation established by the Federal Bureau of Investigation.

(b) It shall be the duty of the division director to keep a record of all information received from the Georgia Bureau of Investigation and the Federal Bureau of Investigation with respect to criminal identification and to cooperate with the Georgia Bureau of Investigation, similar departments in other states, and the United States Department of Justice in any criminal identification system.

(c) At such times as the board may require, fingerprint cards of licensees and registrants may be periodically reprocessed to identify criminal convictions subsequent to licensure or registration. (Ga. L. 1973, p. 40, § 11; Ga. L. 1981, p. 1828, § 8; Ga. L. 1984, p. 1338, § 2; Ga. L. 1987, p. 1400, § 9; Ga. L. 2000, p. 1706, § 19.)

Cross references. — Georgia Crime Information Center generally, § 35-3-30 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Board may issue licenses and registrations prior to receiving investigation report from agencies. — While fingerprints of applicants for licensure and registration must be forwarded to certain state and federal agencies, the

Georgia Board of Private Detective and Security Agencies may, in the Board's discretion, issue such licenses and registrations prior to receiving responses from these agencies. 1975 Op. Att'y Gen. No. 75-100.

43-38-10. Permits to carry firearms; proficiency requirement; exemption from specified laws; denial, refusal to renew, and suspension of permits; effect of license suspension and restoration.

(a) The board may grant a permit to carry a pistol, revolver, or other firearm to any person who is at least 21 years of age and who is licensed or registered in accordance with this chapter and who meets the qualifications and training requirements set forth in this Code section and such other qualifications and training requirements as the board by rule may establish. The board shall have the authority to establish limits on type and caliber of such weapons by rule. Application for such permit and for renewal thereof shall be made on forms provided by the division director. No weapons permit issued under this Code section shall be transferable to another individual.

(b) No permit under this Code section shall be issued or renewed until the applicant has presented proof to the board that he is proficient in the use of firearms. The board shall have the authority to require periodic recertification of proficiency in the use of firearms and to refuse to renew a permit upon failure to comply with such requirement. The applicant shall present proof to the board that:

(1) He has demonstrated on the firearms range proficiency in the use of firearms by meeting such minimum qualifications on pistol and shotgun (if so armed) courses as the board may prescribe by rule; and

(2) He has received such other training and instruction in the use of firearms as the board may require by rule.

(c) All licensees and registrants under this chapter shall be required to obtain from the board a weapons permit under this Code section if a firearm is carried, or is to be carried, by such licensee or registrant while at or en route directly to and from his post or place of employment.

(d) Any licensee or registrant under this chapter meeting the qualifications and training requirements set out in this Code section may be issued an exposed weapons permit in accordance with this Code section and shall be authorized to carry such firearm in an open and fully exposed manner. Such carrying of a firearm shall be limited to the time the licensee or registrant is on duty or en route directly to and from his post or place of employment. No stopover en route to and from such post or place of employment is permitted under the terms of this Code section.

(e) Licensees or registrants under this chapter may apply to the board for a concealed weapons permit. Qualifications and training requirements for such permits and restrictions on such permits shall be

established by appropriate rules of the board. The board shall, in its discretion, consider and approve each application for a concealed weapons permit on an individual basis.

(f) An individual issued a permit in accordance with this Code section shall be exempt from the following laws of this state:

- (1) Code Section 16-11-126, relating to carrying a weapon;
- (2) Code Section 16-11-127, relating to carrying a weapon or long gun in an unauthorized location; and
- (3) Code Section 16-11-129, relating to licenses to carry weapons generally.

(g) The board shall have the power to deny a weapons permit to any applicant who fails to provide the information and supporting documentation required by this Code section or to refuse to renew a permit upon failure to comply with such weapons proficiency recertification requirements as the board may prescribe.

(h) The board shall have the authority to order the summary suspension of any weapons permit issued under this Code section, pending proceedings for revocation or other sanction, upon finding that the public health, safety, or welfare imperatively requires such emergency action, which finding shall be incorporated in its order.

(i) The board shall have the same power and authority to deny and sanction weapons permits under this Code section as that enumerated in Code Section 43-38-11, based on the same grounds as those enumerated in that Code section.

(j) A weapons permit issued under this Code section to any person whose license is suspended pursuant to subsection (f) of Code Section 43-38-6 or whose registration is suspended pursuant to subsection (g) of Code Section 43-38-7 shall be suspended at the same time as the suspension of the license or registration without a prior hearing as required in Code Section 43-38-11. A weapons permit shall be restored to a person upon the restoration of the person's license or registration. (Ga. L. 1973, p. 40, § 12; Ga. L. 1981, p. 1828, § 10; Ga. L. 1982, p. 3, § 43; Ga. L. 1987, p. 1400, § 10; Ga. L. 2000, p. 1161, § 5; Ga. L. 2000, p. 1706, § 19; Ga. L. 2010, p. 963, § 2-19/SB 308.)

The 2010 amendment, effective June 4, 2010, in subsection (f), deleted "concealed" preceding "weapon" in paragraph (f)(1), substituted "a weapon or long gun in an unauthorized location; and" for "deadly weapons at public gatherings;" in paragraph (f)(2), deleted former paragraph (f)(3), which read: "Code Section 16-11-128, relating to carrying a pistol

without a license; and", redesignated former paragraph (f)(4) as present paragraph (f)(3), and substituted "weapons" for "pistols and revolvers" near the end of present paragraph (f)(3). See editor's note for applicability.

Cross references. — Exemptions from firearm-possession laws generally, § 16-11-130.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1987, “weapons” was substituted for “weapon’s” twice in subsection (j).

Editor’s notes. — Ga. L. 2010, p. 963, § 3-1, not codified by the General Assembly, provides, in part, that the amendment

of this Code section shall apply to all offenses committed on and after June 4, 2010, and shall not affect any prosecutions for acts occurring before June 4, 2010, and shall not act as an abatement of any such prosecution.

OPINIONS OF THE ATTORNEY GENERAL

One may obtain license to carry concealed weapon from probate judge of county of residence. — Person licensed or registered with the Georgia Board of Private Detective and Private Security Agencies may carry a concealed weapon, if properly licensed by a probate judge of the county of residence, notwithstanding the fact that the board has not issued the licensee or registrant a permit to carry a weapon in a concealed manner. 1976 Op. Att’y Gen. No. 76-68.

Board permit required. — Private detectives or security guards may carry firearms while on duty or enroute only when issued a permit from the Georgia Board of Private Detective and Security Agencies. 1986 Op. Att’y Gen. No. 86-22 (distinguishing 1976 Op. Att’y Gen. No. 76-68 or construing former law).

All peace officers who are licensed by the Georgia Board of Private Detective and Security Agencies and who intend to carry firearms must obtain a weapons permit from the Board in addition to Peace Officer Training Certification. 1997 Op. Att’y Gen. No. 97-22.

Preemptive effect of federal law. — Georgia Board of Private Detective and Security Agencies is not required by federal law to modify the frequency of background checks conducted on individuals issued weapon permits pursuant to O.C.G.A. § 43-38-10, but the Armored Car Industry Reciprocity Act of 1993, 15 U.S.C. § 5901 et seq., does preempt licensing requirements for armored car crew members who are carrying weapons based on a federal reciprocity agreement. 1995 Op. Att’y Gen. No. 95-21.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Proof That Firearm License Holder was Improperly Denied License to Carry Concealed Weapon, 54 POF3d 65.

43-38-10.1. Training instructors and training programs.

- (a) The board shall provide by rule and regulation for the registration of all training instructors or training programs so as to regulate all training requirements for licensure, registration, or weapons permits required by this chapter.
- (b) The board shall have the authority to promulgate rules and regulations governing minimum training standards for licensure, registration, or weapons permits. Such training shall be conducted by a board registered training instructor or through a board approved training program.
- (c) Any board registered training instructor or board approved training program shall be required to submit to appropriate inspection of facilities and review of curriculum.

(d) The board may suspend, revoke, or deny any application for registration for any training instructor or suspend, revoke, or deny approval of any training program as provided in Code Section 43-38-11. (Code 1981, § 43-38-10.1, enacted by Ga. L. 1987, p. 1400, § 11.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1987, “weapons” was substituted for “weapon’s” in both subsection (a) and the first sentence of subsection (b).

RESEARCH REFERENCES

ALR. — Actions of security service company’s employee as rendering company liable under contract to protect persons or property, 83 ALR4th 1150.

43-38-11. Denial, revocation, or sanction of licenses and registrations; action by board; judicial review.

(a) The board shall have the authority to refuse to grant a license or registration to an applicant therefor or to revoke the license or registration of a person licensed or registered by the board or to discipline a person licensed or registered by the board upon a finding by a majority of the entire board that the licensee, registrant, or applicant has:

(1) Failed to demonstrate the qualifications or standards for a license or registration contained in this chapter or the rules or regulations under which licensure is sought or held. It shall be incumbent upon the applicant to demonstrate to the satisfaction of the board that he meets all the requirements for the issuance of a license or registration and, if the board is not satisfied as to the applicant’s qualifications, it may deny a license or registration without a prior hearing; provided, however, that the applicant shall be allowed to appear before the board if he so desires;

(2) Made any false statement or given any false information in connection with an application for license or registration, including an application for renewal or reinstatement thereof;

(3) Knowingly violated this chapter or violated any rule or regulation promulgated by the board pursuant to the authority contained in this chapter;

(4) Been convicted, in the courts of this state or of the United States, or in the courts of any other state, territory, or country, of a felony, or any crime involving the illegal use, carrying, or possession of a dangerous weapon, or any crime involving moral turpitude. As used in this subsection, the term “felony” shall include any offense which if committed in this state would be deemed a felony, without regard to its designation elsewhere. For purposes of this subsection, a “conviction” shall be deemed to include a finding or verdict of guilty

or plea of guilty, regardless of whether an appeal of the conviction has been sought;

(5) Been arrested, charged, and sentenced for the commission of a felony, any crime involving the illegal use, carrying, or possession of a dangerous weapon, or any crime involving moral turpitude, where:

(A) A plea of nolo contendere was entered to the charge;

(B) First offender treatment was granted without adjudication of guilt pursuant to the charge; or

(C) An adjudication or sentence was otherwise withheld or not entered on the charge.

The plea of nolo contendere or the order entered pursuant to Article 3 of Chapter 8 of Title 42 or other first offender treatment shall be conclusive evidence of arrest and sentencing for such crime;

(6) Become unable to engage in the private detective or private security business with reasonable skill and safety to the public by reason of illness; use of alcohol, drugs, narcotics, chemicals, or any other type of material; or any other mental or physical condition. The board may, however, after investigation of the circumstances surrounding each application, approve for licensure and registration those individuals who produce certified medical evidence of having been successfully treated and cured of alcoholism, drug addiction, or mental illness;

(7) Committed any act in the practice of the private detective or private security business constituting dishonesty or fraud;

(8) Been convicted of impersonating, or permitting or aiding and abetting any other person to impersonate, a law enforcement officer or employee of the United States or of this state or of any political subdivision thereof in the practice of the private detective or private security business;

(9) Engaged in, or permitted any employee to engage in, the private detective or private security business without a valid license or registration issued under this chapter;

(10) Willfully failed or refused to render a service or to tender a report to a client in connection with the private detective or private security business as agreed between the parties and for which compensation was paid or tendered in accordance with the agreement of the parties;

(11) Committed a felony, any crime involving the illegal use, carrying, or possession of a dangerous weapon, or any crime involving moral turpitude;

(12) Knowingly violated, or advised, encouraged, or assisted in the violation of, any court order or injunction in the course of the private detective or private security business or knowingly advised, encouraged, or assisted in the violation of any lawful order issued by the board;

(13) Failed to renew a canceled bond or liability insurance policy in accordance with subsection (d) of Code Section 43-38-6 or failed to supply the financial affidavit required in lieu thereof;

(14) Undertaken to give legal advice or counsel; misrepresented that he is representing an attorney or is appearing or will appear in any legal proceeding; issued, delivered, or uttered any simulation of process of any nature which might lead a person to believe that such simulation, whether written, printed, or typed, may be a summons, warrant, writ, or other court process or pleading in any court proceeding;

(15) Failed to demonstrate the qualifications or standards for licensure or registration contained in this chapter or in the rules and regulations of the board. It shall be incumbent upon the applicant to demonstrate to the satisfaction of the board that he meets all the requirements for licensure or registration; and, if the board is not satisfied as to the applicant's qualifications, it shall have the power to deny such licensure or registration; or

(16) Purchased, acquired, sold, or released the telephone records, as such term is defined in Code Section 46-5-210, of any third party who is a Georgia resident.

(b)(1) If the board finds that any applicant for licensure or any prospective registrant is unqualified to be granted such license or to be registered, the board may:

(A) Deny the application for licensure or registration; or

(B) Limit or restrict any license or registration for a definite period of time.

(2) If, after notice and hearing, the board finds that the license or registration of any holder thereof should be revoked or otherwise sanctioned, the board may take any one or more of the following actions:

(A) Administer a public reprimand;

(B) Suspend any license or registration for a definite period of time;

(C) Limit or restrict any license or registration for a definite period of time;

(D) Revoke or suspend a license or registration;

(E) Fine any licensee or registrant in an amount not to exceed \$500.00 for each violation of a law or rule or regulation; or

(F) Place a licensee or registrant on probation for a definite period of time and impose such conditions of probation as will adequately protect the public during that period.

In its discretion, the board may restore or reinstate a license or registration which has been sanctioned and, in conjunction therewith, may impose any disciplinary or corrective action provided for in this chapter.

(c) Initial judicial review of a final decision of the board shall be had solely in the superior court of the county of domicile of the board. (Ga. L. 1973, p. 40, § 14; Ga. L. 1981, p. 1828, § 9; Ga. L. 1982, p. 3, § 43; Ga. L. 1984, p. 1338, § 3; Ga. L. 1986, p. 751, § 3; Ga. L. 1987, p. 3, § 43; Ga. L. 1987, p. 1400, § 12; Ga. L. 1992, p. 6, § 43; Ga. L. 2000, p. 1161, § 6; Ga. L. 2000, p. 1706, § 18; Ga. L. 2006, p. 562, § 4/SB 455.)

Editor's notes. — Ga. L. 2006, p. 562, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Telephone Records Privacy Protection Act.'"

Ga. L. 2006, p. 562, § 2, not codified by the General Assembly, provides that: "The General Assembly finds that:

"(1) Telephone records can be of great use to criminals because the information contained in call logs listed in such records include a wealth of personal data;

"(2) Many call logs reveal the names of telephone users' doctors, public and private relationships, business associates, and more;

"(3) Although other personal information such as social security numbers may appear on public documents, which can be accessed by data brokers, the only warehouse of telephone records is located at the telephone companies themselves;

"(4) Telephone records are sometimes

accessed without authorization of the customer by:

"(A) An employee of the telephone service provider selling the data; and

"(B) 'Pretexting,' whereby a data broker or other person pretends to be the owner of the telephone and convinces the telephone company's employees to release the data to such person; and

"(5) Telephone companies encourage customers to manage their accounts online with many setting up the online capability in advance, although many customers never access their account online. If someone seeking the information activates the account before the customer, he or she can gain unfettered access to the telephone records and call logs of that customer."

Law reviews. — For article on the effect on receiving government-issued licenses after a conviction based on a nolo contendere plea, see 13 Georgia L. Rev. 723 (1979).

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Board may issue license or registration before receipt of fingerprint reports from agencies. — While fingerprints of applicants for licensure and

registration must be forwarded to certain state and federal agencies, the Georgia Board of Private Detective and Security Agencies may, in the Board's discretion,

issue such licenses and registrations prior to receiving responses from these agencies. 1975 Op. Att'y Gen. No. 75-100.

43-38-11.1. Suspension of license, registration, or weapons permit.

(a) After proper notification, the board may suspend the license, registration, or weapons permit of any licensee, registrant, or weapons permit holder without a prior hearing as required in Code Section 43-38-11, provided that said licensee, registrant, or weapons permit holder is determined by the board to present a clear and present danger to the public safety on the grounds outlined in Code Section 43-38-11, is found to have had a prior felony conviction, or is currently under a first offender sentence for a felony crime that was not reported on the application for licensure or registration.

(b) After proper notification the board may suspend without a prior hearing as required in Code Section 43-38-11 the license of any licensee pursuant to subsection (f) of Code Section 43-38-6 or the registration of any registrant pursuant to subsection (g) of Code Section 43-38-7 or the weapons permit of any weapons permit holder pursuant to subsection (j) of Code Section 43-38-10. (Code 1981, § 43-38-11.1, enacted by Ga. L. 1983, p. 489, § 1; Ga. L. 1987, p. 1400, § 13; Ga. L. 1988, p. 13, § 43; Ga. L. 1991, p. 1027, § 2.)

43-38-12. Applicability of the "Georgia Administrative Procedure Act."

All hearings required to be conducted by the board shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; and all rules and regulations of the board shall be adopted and promulgated in accordance with Chapter 13 of Title 50. (Ga. L. 1981, p. 1828, § 13.)

43-38-13. Arrest powers of licensees and registrants.

Licensees or registrants under this chapter shall have the same power of arrest as that granted to a private person by Code Section 17-4-60. (Ga. L. 1973, p. 40, § 13; Ga. L. 1981, p. 1828, § 11.)

JUDICIAL DECISIONS

Cited in *Gonzalez v. Krystal Co.*, 173 Ga. App. 574, 327 S.E.2d 546 (1985).

43-38-14. Exceptions to operation of chapter; local regulation.

(a) This chapter shall not apply to:

(1) An officer or employee of the United States of America or of this state or a political subdivision thereof while the employee or officer is engaged in the performance of official duties;

(2) A person engaged in the business of furnishing information in connection with credit or marketing and a person or firm engaged as a consumer reporting agency, as defined by the federal Fair Credit Reporting Act;

(3) An attorney at law or a bona fide legal assistant in performing his or her duties;

(4) Admitted insurers, agents, and insurance brokers licensed by the state while performing duties in connection with insurance transacted by them;

(5) A firm engaged in the business of independent insurance claims adjusting whose employees hold a valid Georgia adjuster's license; or

(6) The employees of a firm identified in paragraph (5) of this subsection.

(b) Any person with a valid peace officer certification issued pursuant to Chapter 8 of Title 35, the "Georgia Peace Officer Standards and Training Act," who is employed by or works as an independent contractor for a licensed:

(1) Private security business shall be exempt from any training provisions required by this chapter for such business and shall be deemed to have satisfied all board rules and regulations relative to training; and

(2) Private detective business or private security business shall be exempt from further licensure under this chapter and shall be permitted to carry a firearm without obtaining any weapons permit from the board; provided, however, that such licensed private detective business or private security business shall be required to register such employee or independent contractor with the board.

(c) This chapter shall not prevent the local authorities of any municipality or county, by ordinance and within the exercise of the police power of such municipality or county, from imposing local regulations upon any street patrol, special officer, or person furnishing street patrol service, including regulations requiring registration with an agency to be designated by such municipality or county.

(d) This chapter shall not apply to a person or corporation which employs persons who do private security work in connection with the

affairs of such employer only and who have an employer-employee relationship with such employer. Neither such persons or corporations nor their employees shall be required to register or be licensed under this chapter, although such persons or corporations or their employees may elect to be licensed under this chapter. (Ga. L. 1973, p. 40, § 15; Ga. L. 1975, p. 785, § 1; Ga. L. 1978, p. 1515, § 2; Ga. L. 1981, p. 1828, § 12; Ga. L. 1982, p. 3, § 43; Ga. L. 1991, p. 1027, § 3; Ga. L. 2000, p. 1161, § 7; Ga. L. 2011, p. 415, § 1/HB 53.)

The 2011 amendment, effective May 11, 2011, deleted former paragraph (a)(5), which read: "A peace officer employed on a full-time basis by a federal, state, county, or local law enforcement agency who contracts directly with an employer to work during his or her off-duty hours and whose off-duty employment is conducted on an independent contractor basis with another employer other than a peace officer engaged in the private detective or private security business or a private detective or private security agency, subject to Code

Section 16-10-3, relating to the receipt of funds by state officers or employees for the enforcement of penal laws;"; redesignated former paragraphs (a)(6) and (a)(7) as present paragraphs (a)(5) and (a)(6), respectively; substituted "firm identified in paragraph (5)" for "firm mentioned in paragraph (6)" in paragraph (a)(6); and rewrote subsection (b), which read: "This chapter does not apply to any person covered by Chapter 8 of Title 35, the 'Georgia Peace Officer Standards and Training Act.'".

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Applicability. — Persons or corporations which employ personnel who engage in activities covered by O.C.G.A. § 43-38-3(2), which defines private detective business, are required to be licensed by the State Board of Private Detective and Security Agencies, unless they are otherwise exempt pursuant to O.C.G.A. § 43-38-14. Persons or corporations which must be licensed are required to register their investigative personnel. 1991 Op. Att'y Gen. No. 91-34.

Security guards employed by Atlanta Housing Authority are not subject to provisions of this chapter because employees of the Atlanta Housing Authority are employees of a political subdivision of this state. 1976 Op. Att'y Gen. No. 76-113 (see O.C.G.A. Ch. 38, T. 43).

Security officers providing security to federal facilities on an independent contractor basis must comply with state legislation concerning training and licensing. 1997 Op. Att'y Gen. No. 97-31.

Federal Aviation Administration Authorization Act of 1994, 49 U.S.C. § 14501 et seq., preempts state legislation concerning the training and licens-

ing of security officers performing pre-departure screening under a contract with an airline or an aircraft carrier. 1997 Op. Att'y Gen. No. 97-31.

Companies employing only in-house investigative personnel need not obtain licenses. — When a company employs only in-house investigative personnel, and consequently does not fall within the definition of a private detective business, the company is not required to obtain a license. 1979 Op. Att'y Gen. No. 79-21.

In-house investigators need not register. — In-house investigative personnel conducting investigations off the employer's premises are not required to be registered by the Georgia Board of Private Detective and Security Agencies. This exemption from registration applies only to those in-house investigators who are employed exclusively and regularly by only one employer; their investigations are in connection with the employer's affairs, and the employer is not in the private detective business. 1979 Op. Att'y Gen. No. 79-21.

Peace officer engaged in the private detective or security business may not

employ other peace officers, unless those individuals are licensed or registered by the Georgia Board of Private Detective and Security Agencies. 1997 Op. Att'y Gen. No. 97-22.

Consumer reporting agency or a credit reporting business that is exempt from licensure requirements as a private detective business under O.C.G.A. § 43-38-14(a)(2) nevertheless must obtain a license from the Georgia Board of Private Detective and Security Agencies to perform private detective business activities as defined in O.C.G.A. § 43-38-3(3) that do not fall within the scope of this exemption or any other exemption. 2007 Op. Att'y Gen. No. 2007-2.

Full-time peace officers charged by

law with making arrests are exempt.

— Exemption from provisions of this chapter given to certain peace officers extends only to those persons charged by law with duty to maintain public order or to make arrests for violations of the law, and who devote, on a regular basis, their full time to performance of such duties. 1974 Op. Att'y Gen. No. 74-148 (see O.C.G.A. Ch. 38, T. 43).

For exemption from licensure, the peace officer must be employed in law enforcement on a full-time basis, must contract directly with an employer, and must obtain approval from the chief or head of the law enforcement agency. 1997 Op. Att'y Gen. No. 97-22.

43-38-14.1. Restrictions on local business licenses.

(a) No municipality, county, or other political subdivision of this state shall grant a business license to any person required to be licensed under this chapter until such person has made bona fide application to the board to be licensed under this chapter and the board has taken action under the application other than refusal, cancellation, revocation, or failure to renew the applicant's license.

(b) As used in this Code section, the term "person" shall mean any individual, firm, association, partnership, limited liability company, or corporation. (Code 1981, § 43-38-14.1, enacted by Ga. L. 1984, p. 1338, § 4; Ga. L. 1993, p. 123, § 45.)

43-38-15. Applicability of chapter.

No individual, firm, association, company, partnership, limited liability company, or corporation shall engage in any activity covered by this chapter unless such individual, firm, association, company, partnership, limited liability company, or corporation is in compliance with this chapter. (Ga. L. 1981, p. 1828, § 14; Ga. L. 1993, p. 123, § 46.)

43-38-16. Penalty.

Any person who engages in the private detective business or private security business or offers, pretends, or holds himself out as eligible to engage in the private detective business or private security business and who is not legally licensed or registered under this chapter shall be guilty of a misdemeanor. Each day or fraction of a day that he practices in violation of this chapter shall constitute a separate offense. (Ga. L. 1973, p. 40, § 16; Ga. L. 1981, p. 1828, § 15; Ga. L. 1984, p. 1338, § 5.)

43-38-17. Termination.

Repealed by Ga. L. 1992, p. 3137, § 30, effective July 1, 1992.

Editor's notes. — This Code section (Ga. L. 1981, Ex. Sess., p. 8) and was
was part of the original Code enactment amended by Ga. L. 1987, p. 1400, § 14.

CHAPTER 39

PSYCHOLOGISTS

Sec.		Sec.	
43-39-1.	Definitions.	43-39-9.	Examination of applicants.
43-39-2.	Creation of board of examiners; immunity.	43-39-10.	Reciprocity.
43-39-3.	Appointment to board; qualifications; terms; vacancies; removal.	43-39-11.	Recordation of licenses; clerk's fees; report by clerk to joint-secretary [Repealed].
43-39-4.	Oath of office; certificate of appointment.	43-39-12.	Biennial renewal of licenses.
43-39-5.	Officers; meetings; seal; procedures; expenses.	43-39-13.	Denial, revocation, suspension, and reinstatement of licenses; other disciplinary actions; hearings; appeals.
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43-39-7.	Practicing without a license; use of title; exceptions.	43-39-15.	Continuing education.
43-39-8.	Application for license; qualifications.	43-39-16.	Privileged communications.
		43-39-17.	Use of title "psychologist."
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		43-39-19.	Penalty.
		43-39-20.	Immunity from civil and criminal liability for certain good faith actions.

Cross references. — Professional corporations generally, T. 14, C. 7.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law,

§ 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

Validity of legislation regulating, licensing, or prescribing for certification of psychologists, 81 ALR2d 791.

Defamation of psychiatrist, psychologist, or counselor, 38 ALR4th 874.

43-39-1. Definitions.

As used in this chapter, the term:

(1) "Board" means the State Board of Examiners of Psychologists.

(2) "Neuropsychology" means the subspecialty of psychology concerned with the relationship between the brain and behavior, including the diagnosis of brain pathology through the use of psychological tests and assessment techniques.

(3) "To practice psychology" means to render or offer to render to individuals, groups, organizations, or the public for a fee or any remuneration, monetary or otherwise, any service involving the application of recognized principles, methods, and procedures of the science and profession of psychology, such as, but not limited to, diagnosing and treating mental and nervous disorders and illnesses, rendering opinions concerning diagnoses of mental disorders, including organic brain disorders and brain damage, engaging in neuropsychology, engaging in psychotherapy, interviewing, administering, and interpreting tests of mental abilities, aptitudes, interests, and personality characteristics for such purposes as psychological classification or evaluation, or for education or vocational placement, or for such purposes as psychological counseling, guidance, or readjustment. Nothing in this paragraph shall be construed as permitting the administration or prescription of drugs or in any way infringing upon the practice of medicine as defined in the laws of this state. (Ga. L. 1951, p. 408, § 1; Ga. L. 1970, p. 511, § 1; Ga. L. 1982, p. 1589, §§ 1, 2; Ga. L. 1986, p. 473, § 1; Ga. L. 1992, p. 6, § 43; Ga. L. 1993, p. 355, § 1.)

Cross references. — Appointment to staff of medical care facility or institution, § 31-7-161.

JUDICIAL DECISIONS

Neuropsychologist's testimony considered by workers' compensation board. — In reviewing a decision of the State Board of Workers' Compensation, the court erred in not ruling that under the 1993 amendment of O.C.G.A. § 43-39-1 the testimony of a neuropsychologist could be considered in support of

the board's award. *Drake v. LaRue Constr. Co.*, 215 Ga. App. 453, 451 S.E.2d 792 (1994).

Cited in *Jacobsen v. Muller*, 181 Ga. App. 382, 352 S.E.2d 604 (1986); *Jacobsen v. Boyle*, 196 Ga. App. 411, 397 S.E.2d 1 (1990).

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §§ 11, 35.

C.J.S. — 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers, § 1 et seq.

43-39-2. Creation of board of examiners; immunity.

There is created a State Board of Examiners of Psychologists, to consist of six members who shall be appointed by the Governor under conditions set forth in this chapter. No member of the board shall be liable to civil action for any act performed in good faith in the performance of that member's duties as prescribed by law. (Ga. L. 1951, p. 408, § 2; Ga. L. 1979, p. 516, § 2; Ga. L. 1980, p. 1337, § 1; Ga. L. 1986, p. 473, § 1.)

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Members appointed to board must be licensed. 1970 Op. Att'y Gen. No. 70-150.

General Assembly conferred some discretion upon the board in the examination of applicants; the board may examine applicants according to methods deemed most practical and expeditious by the board, and the board is unrestricted in the subject field in which the applicant may be tested on qualifications for licensure as an applied psychologist. 1980 Op. Att'y Gen. No. 80-26.

43-39-3. Appointment to board; qualifications; terms; vacancies; removal.

(a) The Governor shall appoint members to serve on the board so that the board shall at all times be composed of five members who are persons licensed as psychologists under this chapter and one consumer member who is not licensed as a psychologist under this chapter and who has no connection whatsoever with the practice or profession of psychology.

(b) All six members of the board shall serve for terms of five years and until their successors are appointed and qualified. Vacancies on the board shall be filled by the Governor for the unexpired term in the same manner as the original appointment, and members shall serve until their successors are appointed and qualified. Any board member may be removed after notice and hearing for incompetence, neglect of duty, malfeasance in office, or commission of a crime involving moral turpitude. (Ga. L. 1951, p. 408, § 3; Ga. L. 1970, p. 511, § 3; Ga. L. 1980, p. 1337, § 3; Ga. L. 1986, p. 473, § 1.)

Law reviews. — For comment on *Rogers v. Medical Ass'n*, 244 Ga. 151, 259 S.E.2d 85 (1979), invalidating Georgia

statute requiring Governor's appointments to Composite State Board of Medical Examiners be made solely from nomi-

nees submitted by state medical society as an unconstitutional delegation of legislative authority to a private organization, see 29 Emory L.J. 1183 (1980).

43-39-4. Oath of office; certificate of appointment.

Immediately and before entering upon the duties of their office, the members of the board shall take the constitutional oath of office and shall file the same in the office of the Governor who, upon receiving said oath of office, shall issue to each member a certificate of appointment. (Ga. L. 1951, p. 408, § 4; Ga. L. 1986, p. 473, § 1.)

43-39-5. Officers; meetings; seal; procedures; expenses.

(a) The board shall elect annually a president and a vice-president. The board shall operate under the terms of Chapter 1 of this title, providing for a division director for the professional licensing boards division; and the division director shall serve the board as provided by law.

(b) The board shall hold at least one regular meeting each year. Called meetings may be held at the discretion of the president or at the written request of any two members of the board.

(c) The board shall adopt a seal, which must be affixed to all licenses issued by the board.

(d) The board shall from time to time adopt such rules and regulations as it may deem necessary for the performance of its duties and shall provide for examinations and pass upon the qualifications of the applicants for the practice of psychology.

(e) Each member of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2. (Ga. L. 1951, p. 408, § 5; Ga. L. 1953, Nov.-Dec. Sess., p. 184, § 1; Ga. L. 1980, p. 1337, § 3; Ga. L. 1986, p. 473, § 1; Ga. L. 2000, p. 1706, § 16.)

Administrative rules and regulations. — Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of State Board of Examiners of Psychologists, Chapter 510-1 et seq.

JUDICIAL DECISIONS

Cited in *Brown v. State Bd. of Exmrs. of Psychologists*, 190 Ga. App. 311, 378 S.E.2d 718 (1989).

43-39-6. Authority of board to establish code of conduct and of ethics, administer oaths, summon witnesses, and take testimony; issuance of licenses; enforcement of chapter.

The board shall have authority to establish a code of conduct and of ethics, to administer oaths, to summon witnesses, and to take testimony in all matters relating to its duties. The board shall issue licenses to practice psychology to all persons who shall present satisfactory evidence of attainments and qualifications under this chapter and the rules and regulations of the board. Such licenses shall be attested by the division director under the board's adopted seal, and it shall give absolute authority to the person to whom it is issued to practice psychology in this state. It shall be the duty of the division director, under the direction of the board, to aid the prosecuting attorneys in the enforcement of this chapter and the prosecution of all persons charged with the violation of its provisions. (Ga. L. 1951, p. 408, § 17; Ga. L. 1986, p. 473, § 1; Ga. L. 1994, p. 224, § 1; Ga. L. 2000, p. 1706, § 19.)

43-39-7. Practicing without a license; use of title; exceptions.

A person who is not licensed under this chapter shall not practice psychology, shall not use the title "psychologist," and shall not imply that he or she is a psychologist. If any person shall practice psychology or hold himself or herself out as being engaged in the practice of psychology and shall not then possess in full force a valid license to practice psychology under the laws of this state, such person shall be in violation of this chapter. The following are exceptions:

(1) Nothing in this chapter shall require licensure for a person who is certified as a school psychologist by the Professional Standards Commission while that person is working as an employee in an educational institution recognized by the State Board of Examiners of Psychologists as meeting satisfactory accreditation standards, provided that no fees are charged directly to clients or through a third party;

(2) Nothing in this chapter shall be construed to prevent the teaching of psychology or the conduct of psychological research, provided that such teaching or research does not involve the delivery or supervision of direct psychological services to individuals or groups of individuals by an unlicensed person. Any person holding a doctoral degree in psychology while working as an employee in a research laboratory, college, or university recognized by the board as meeting satisfactory accreditation standards may use the title "psychologist" in conjunction with activities permitted by this paragraph, provided that no fees are charged directly to clients or through a third party;

(3) Nothing in this chapter shall require licensure for a person who was engaged in the practice of psychology as an employee of an agency or department of the state government, any of its political subdivisions, or community service boards as defined in Code Section 37-2-2 either prior to July 1, 1996, at a state intermediate care or skilled care facility for persons with mental retardation or prior to July 1, 1997, at any other facilities or offices of the entities previously mentioned, but only when that person is engaged in that practice as an employee of such entities;

(4) Nothing in this chapter shall be construed to limit the activities and services of a person in the employ of or serving for an established and recognized religious organization, provided that the title "psychologist" is not used by a person not licensed and that the person does not imply that he or she is a psychologist;

(5) Persons who hold a doctoral degree in psychology may practice under the supervision of a licensed psychologist in order to obtain the experience required for licensure;

(6) Nothing in this chapter shall be construed to prohibit any person from engaging in the lawful practice of medicine, nursing, professional counseling, social work, and marriage and family therapy, as provided for under other state law, provided that such person shall not use the title "psychologist" nor imply that he or she is a psychologist;

(7) Nothing in this chapter shall be construed to prevent students, trainees, or assistants from engaging in activities defined as the practice of psychology, provided such persons are under the direct supervision and responsibility of a licensed psychologist and the student, trainee, or assistant does not represent himself or herself to be a psychologist. The board shall establish rules and regulations for the supervision of persons exempted under this paragraph; and

(8) An individual licensed to practice psychology in another jurisdiction may practice psychology in Georgia without applying for a license, so long as the requirements for a license in the other jurisdiction are equal to or exceed the requirements for licensure in Georgia, and the psychologist limits that person's practice in Georgia to no more than 30 days per year, as defined in the rules and regulations of the board. (Ga. L. 1951, p. 408, § 6; Ga. L. 1970, p. 511, § 4; Ga. L. 1986, p. 473, § 1; Ga. L. 1991, p. 1147, § 1; Ga. L. 1993, p. 355, § 2; Ga. L. 1993, p. 418, § 1; Ga. L. 1994, p. 224, § 2; Ga. L. 1999, p. 81, § 43.)

Cross references. — False or fraudulent advertising, § 10-1-420 et seq.

JUDICIAL DECISIONS

Unlicensed psychologist. — Testimony from an unlicensed psychologist was not rendered inadmissible in a prosecution for child molestation and attempted child molestation based solely on a witness's lack of licensure as Georgia law carved out an exception to the licensing requirements for those witnesses who,

like the state's expert, were practicing under supervision in order to obtain a license. *Nelson v. State*, 279 Ga. App. 859, 632 S.E.2d 749 (2006).

Cited in *Cranford v. Cranford*, 120 Ga. App. 470, 170 S.E.2d 844 (1969); *Gladson v. State*, 258 Ga. 885, 376 S.E.2d 362 (1989).

RESEARCH REFERENCES

ALR. — Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

43-39-8. Application for license; qualifications.

(a) Any person wishing to practice psychology in this state shall make application to the board through the division director upon such form and in such manner as shall be adopted and prescribed by the board and obtain from the board a license so to do. Unless such a person has obtained such a license it shall be unlawful for that person to practice; and if that person shall practice psychology without first having obtained such a license, that person shall be deemed to have violated this chapter.

(b) A candidate for such license shall furnish the board with satisfactory evidence that the candidate:

(1) Is of good moral character;

(2) Has completed the requirements of a doctoral degree from a professional training program in applied psychology, including but not limited to clinical psychology, counseling psychology, industrial or organizational psychology, or school psychology from an accredited educational institution recognized by the board as maintaining satisfactory standards. Any person who has received a doctoral degree in psychology from an accredited educational institution recognized by the board as maintaining satisfactory standards and who has also completed an organized retraining program in applied psychology acceptable to the board shall also meet the degree requirements of this paragraph;

(3) Has had at least two years of experience in psychology of a type considered by the board to be qualifying in nature;

(4) Is competent in psychology, as shown by passing such examinations, written or oral, or both, as the board deems necessary; and

(5) Has not within the preceding six months failed an examination given by the board. (Ga. L. 1951, p. 408, § 7; Ga. L. 1979, p. 843, § 1; Ga. L. 1986, p. 473, § 1; Ga. L. 1987, p. 3, § 43; Ga. L. 1987, p. 343, § 1; Ga. L. 1988, p. 553, § 1; Ga. L. 1991, p. 1147, § 2; Ga. L. 1994, p. 224, § 3; Ga. L. 1999, p. 81, § 43; Ga. L. 2000, p. 1706, § 19.)

Code Commission notes. — The amendment of this Code section by Ga. L. 1987, p. 3, § 43, irreconcilably conflicted with and has been treated as superseded by Ga. L. 1987, p. 343, § 1.

JUDICIAL DECISIONS

Cited in *Cranford v. Cranford*, 120 Ga. App. 470, 170 S.E.2d 844 (1969); *Brown v. State Bd. of Exmrs. of Psychologists*, 190 Ga. App. 311, 378 S.E.2d 718 (1989).

RESEARCH REFERENCES

ALR. — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

43-39-9. Examination of applicants.

Applicants shall take a board approved examination to test the applicant's qualifications. The examination shall be written or oral or both. (Ga. L. 1951, p. 408, § 8; Ga. L. 1984, p. 503, § 1; Ga. L. 1986, p. 473, § 1; Ga. L. 1994, p. 224, § 4; Ga. L. 2010, p. 266, § 41/SB 195.)

The 2010 amendment, effective May 20, 2010, rewrote this Code section.

43-39-10. Reciprocity.

The board may grant a license to any person who at the time of application is licensed by a similar board of another state whose standards, in the opinion of the board, are not lower than those required by this chapter. The board may require the applicant to pass such written and oral examinations as the board may deem necessary. (Ga. L. 1970, p. 511, § 5; Ga. L. 1986, p. 473, § 1; Ga. L. 1991, p. 1147, § 3.)

Cross references. — Cooperation between Georgia and other states generally, T. 28, C. 6.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the provisions, decisions under former Code 1933, §§ 84-3109 and 84-3110 are included in the annotations for this Code section.

Standards for temporary licensing

of one licensed in another state. — For whatever reason a temporary license would be awarded to a person licensed in another state, it is advisable to first determine whether the foreign state's licensing standards are equal to or higher than

those of this state; for persons not licensed by another state, the same standards applied to all other applicants for a temporary license should apply. 1969 Op. Att'y Gen. No. 69-508 (decided under former Code 1933, §§ 84-3109 and 84-3110).

43-39-11. Recordation of licenses; clerk's fees; report by clerk to joint-secretary.

Reserved. Repealed by Ga. L. 1986, p. 473, § 1, effective March 31, 1986.

Editor's notes. — This Code section was based on Ga. L. 1951, p. 408, § 14.

43-39-12. Biennial renewal of licenses.

Licenses issued by the board shall be renewable biennially. (Ga. L. 1951, p. 408, § 16; Ga. L. 1964, p. 256, § 3; Ga. L. 1970, p. 511, § 7; Ga. L. 1979, p. 843, § 5; Ga. L. 1986, p. 473, § 1.)

43-39-13. Denial, revocation, suspension, and reinstatement of licenses; other disciplinary actions; hearings; appeals.

(a) The board shall have the authority to refuse to grant or renew a license to an applicant therefor or to suspend or revoke a license issued by the board or to discipline a person licensed by the board based upon any of the following: the employment of fraud or deception in applying for a license or in passing the examination provided for in this chapter; conviction of a felony; the practice of psychology under a false or assumed name or the impersonation of another practitioner of a like or different name; habitual intemperance in the use of alcoholic beverages, narcotics, or stimulants to such an extent as to incapacitate one in the performance of one's duties; negligence or wrongful actions in the performance of one's duties; or for any violation of subsection (a) of Code Section 43-1-19. Any license revoked by the board shall be subject to reinstatement at the discretion of the board:

(1) In enforcing this subsection, the board may, if it has reasonable basis to believe that the psychologist is practicing while incapacitated in the performance of his or her duties by reason of substance abuse or mental or physical illness, require a licensee or applicant to submit to a mental, physical, or mental and physical examination by an appropriate licensed practitioner designated by the board. The results of such examination shall be admissible in any hearing before the board, notwithstanding any claim of privilege under a contrary rule of law or statute. If a licensee fails to submit to each examination when properly directed to do so by the board, the board may

summarily suspend such license, if the public health, safety, and welfare imperatively requires such action, and thereafter enter a final order upon proper notice, hearing, and proof of such refusal; and

(2) For the purpose of this subsection, the board, if it has a reasonable basis to believe that the psychologist is incapacitated in the performance of his or her duties by reason of substance abuse or mental or physical illness, may require the psychologist to produce or give the board permission to obtain any and all records relating to the alleged incapacitating mental or physical condition of a licensee or applicant, including that individual's personal psychiatric and psychological records; and such records shall be admissible in any hearing before the board. If a licensee fails to provide such records when properly directed to do so by the board, the board may summarily suspend such license, if the public health, safety, and welfare imperatively requires such action, and thereafter enter a final order upon proper notice, hearing, and proof of such refusal.

(b) The board may not suspend or revoke or refuse to renew any license for cause or refuse to issue a license for lack of good moral character unless the person accused has been afforded an opportunity for a hearing by the board before either the board or its hearing officer. The hearing shall be held in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and the board or its hearing officer shall have all the powers and authority granted to tribunals and their hearing officers under Chapter 13 of Title 50.

(c) The action of the board in granting or refusing to grant or renew a license under this chapter, or in revoking or suspending or refusing to revoke or suspend such a license, may be appealed in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," to the superior court in the county where the division director maintains his offices, provided that, if the findings of the board are supported by any evidence, then such findings shall be accepted by the court. (Ga. L. 1951, p. 408, §§ 11-13; Ga. L. 1964, p. 256, § 1; Ga. L. 1979, p. 843, §§ 2, 3; Ga. L. 1986, p. 473, § 1; Ga. L. 1987, p. 3, § 43; Ga. L. 1991, p. 1147, § 4; Ga. L. 2000, p. 1706, § 19.)

Cross references. — Denial of staff privileges at medical care facility or institution, §§ 31-7-164, 31-7-165.

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 1991, a comma was inserted following "safety" in the last sentence of paragraph (a)(2).

RESEARCH REFERENCES

ALR. — Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 ALR 1388.

Improper or immoral sexually related

conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer, 59 ALR4th 1104.

43-39-14. Temporary and provisional licenses.

(a) The board may issue a temporary license to an applicant for a permanent license. Such license shall have the same force and effect as a permanent license. The temporary license will expire 12 months from the date of its issuance and shall not be renewable. Upon a finding by the board that the applicant has failed either the written or oral examination, the board shall revoke such temporary license.

(b) The board may issue a provisional license to an applicant for a permanent license. The provisional license may be granted to an individual who has passed all written examinations and completed all other requirements for permanent license except for the postdoctoral supervised work experience requirement and the oral examination. Provisional licensure will expire in 24 months unless the board grants an exception, or in the event of the granting of a permanent license, whichever occurs first. The provisional license shall not be renewable. An individual who is licensed under this subsection is restricted to the stipulations of the supervised work experience requirement. Provisional licensure will be granted only to an individual who is in the process of completing the postdoctoral supervised work experience requirement and is subject to revocation if the board determines that the requirements of the supervised work experience are not being satisfactorily met. The revocation of a provisional license shall not be considered a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," but a holder of a provisional license shall have a right to appear before the board. (Ga. L. 1951, p. 408, § 10; Ga. L. 1980, p. 1337, § 4; Ga. L. 1984, p. 503, § 2; Ga. L. 1986, p. 473, § 1; Ga. L. 1991, p. 1147, § 5; Ga. L. 1994, p. 97, § 43; Ga. L. 1994, p. 224, § 5.)

Editor's notes. — Former subsection (b), pertaining to provisional licenses, was automatically repealed pursuant to its own terms, effective July 1, 1993.

OPINIONS OF THE ATTORNEY GENERAL

Board may grant or deny permanent license so long as board acts constitutionally. — Board is not prejudiced in granting or denying a permanent license for grounds and under procedures not violating the Constitutions or laws of the United States and this state. 1969 Op. Att'y Gen. No. 69-508.

Standards for temporary licensing of one licensed in another state. — For whatever reason a temporary license would be awarded to a person licensed in another state, it is advisable to first deter-

mine whether the foreign state's licensing standards are equal to or higher than those of this state; for persons not licensed by another state, the same standards applied to all other applicants for a temporary license should apply. 1969 Op. Att'y Gen. No. 69-508.

Temporary license expires when board rejects or approves permanent license. — Any rights acquired by an applicant who has received a temporary license authorized by O.C.G.A. § 43-39-14 terminate upon the statute's stated condi-

tions, i.e., when the board rejects or approves the application for a permanent license. 1969 Op. Att'y Gen. No. 69-508.

43-39-15. Continuing education.

The board is authorized to establish requirements of continuing education as a condition for the renewal of licensure of psychologists; however, rules and regulations concerning accreditation of continuing education programs and other educational experience and the assignment of credit for participation therein must be promulgated by the board at least one year prior to implementation of continuing education requirements for renewal of licensure. The board shall be authorized to waive continuing education requirements in cases of hardship, disability, illness, or under such other circumstances as the board deems appropriate. (Ga. L. 1978, p. 1686, § 1; Ga. L. 1986, p. 473, § 1; Ga. L. 1991, p. 1147, § 6.)

43-39-16. Privileged communications.

The confidential relations and communications between a licensed psychologist and client are placed upon the same basis as those provided by law between attorney and client; and nothing in this chapter shall be construed to require any such privileged communication to be disclosed. (Ga. L. 1951, p. 408, § 18; Ga. L. 1986, p. 473, § 1.)

Cross references. — Confidentiality of communications between attorney and client, §§ 24-9-21, 24-9-24, 24-9-25.

Law reviews. — For annual survey of the law of evidence, see 38 Mercer L. Rev. 215 (1986). For annual survey on law of evidence, see 43 Mercer L. Rev. 257 (1991).

For note discussing confidential communication privileges in Georgia, see 2 Ga. St. B.J. 356 (1966).

For comment, "Privileged Communications Between Psychiatrist and Patient in Georgia-Termination of the Privilege Upon Death of the Patient," see 9 Ga. St. B.J. 550 (1973). For comment, "The Psychotherapist-Client Testimonial Privilege: Defining the Professional Involved," see 34 Emory L.J. 777 (1985).

JUDICIAL DECISIONS

Since defendant's counselors were not psychiatrists or clinical psychologists, defendant's communications with the counselors were not privileged. *Lipsey v. State*, 170 Ga. App. 770, 318 S.E.2d 184 (1984).

When the defendant's counselors were not psychiatrists or clinical psychologists and the defendant was not a client, communications were not privileged. *Gore v.*

State, 251 Ga. App. 461, 554 S.E.2d 598 (2001).

Ga. L. 1951, p. 408, § 20 (see O.C.G.A. § 43-39-19) has no relation to Ga. L. 1951, p. 408, § 18 (see O.C.G.A. § 43-39-16) which deals only with confidential relations and communications between applied psychologist and client. That section (see § 43-39-19) has reference only to Ga. L. 1951, p. 408, §§ 6, 7,

and 19 (see O.C.G.A. §§ 43-39-7, 43-39-8, and 43-39-17), which deal with the practice of applied psychology without a license. *Cranford v. Cranford*, 120 Ga. App. 470, 170 S.E.2d 844 (1969).

Psychologists are not criminally chargeable for divulging confidences. — By this statute, the confidential relations and communications between licensed applied psychologist and client are placed upon the same basis as those provided by law between attorney and client. There are no statutory criminal penalties visited upon an attorney who, in violation of the attorney's ethical relation to the client, divulges a confidential communication. *Cranford v. Cranford*, 120 Ga. App. 470, 170 S.E.2d 844 (1969) (see O.C.G.A. § 43-39-16).

Deletion of privileged information from document sought to be produced. — When any document sought to be produced contains a mixture of privileged and nonprivileged communication or information, ample remedy is provided to delete privileged matter, and this remedy is within the inherent power of the court. *Cranford v. Cranford*, 120 Ga. App. 470, 170 S.E.2d 844 (1969).

When the mental health records of an incompetent, deaf, and speechless criminal defendant contain both privileged communications under O.C.G.A. §§ 24-9-21(5) and 43-39-16 and nonprivileged communications, records which contain privileged material are not to be produced in response to a request for production, but the remaining documents must be produced. *Annandale at Suwanee, Inc. v. Weatherly*, 194 Ga. App. 803, 392 S.E.2d 27 (1990).

Allowing psychologist to decline to answer questions about victim. — Trial court did not err in allowing a psychologist who treated the victim for emotional disturbances to decline to answer questions about the victim on the ground that the psychologist's conversations with the victim were confidential and privileged since the victim's emotional problems must be considered irrelevant to the charge for the victim's murder. *Hanlon v. State*, 162 Ga. App. 46, 290 S.E.2d 285 (1982).

Prosecution witness's communications during hypnosis conducted for

prosecution purposes are not privileged. — Communications made during hypnotic "age regression" treatment of a prosecution witness are not privileged under this section and are subject to disclosure if the psychologist conducting the treatment sessions is acting at the behest of, and as a member of, the prosecution, and the treatment is conducted not for any therapeutic reasons, but in order to bolster the prosecution's case. *Emmett v. Ricketts*, 397 F. Supp. 1025 (N.D. Ga. 1975) (see O.C.G.A. § 43-39-16).

O.C.G.A. § 43-39-16 does not exempt communications made by a witness for the prosecution during hypnosis conducted for prosecution purposes. *Napper v. Georgia Television Co.*, 257 Ga. 156, 356 S.E.2d 640 (1987).

Fact of employment is neither within physician-patient privilege nor within the attorney-client privilege. *Cranford v. Cranford*, 120 Ga. App. 470, 170 S.E.2d 844 (1969).

Privilege waived. — Trial court did not abuse the court's discretion in admitting a 1980 report during the defendant's murder trial, which admitted a psychologist's testimony and materials, performed for evaluation purposes, specifically to explore the possibility of an insanity plea, rather than for professional treatment, as under Georgia law, there can be no expectation of confidentiality based on the psychologist/patient privilege when the sole purpose of the relationship is evaluation. Even if such a privilege existed as to the 1980 report, when the defendant raised the claim of mental retardation, putting the defendant's mental capacity at issue, such affirmative defense waived any privilege. *Rogers v. State*, 282 Ga. 659, 653 S.E.2d 31 (2007), cert. denied, 552 U.S. 1311, 128 S. Ct. 1882, 170 L. Ed. 2d 747; reh'g denied, 554 U.S. 930, 128 S. Ct. 2988, 171 L. Ed. 2d 907 (2008).

Communications held not privileged. — Patient-psychologist privilege does not apply when the defense is insanity and the statement in question is made during an evaluation by a court-appointed psychologist. The same is true if the examining psychologist is the state's psychologist. *Harris v. State*, 256 Ga. 350, 349 S.E.2d 374 (1986).

Defendant claimed that a social worker's testimony about counseling sessions with the defendant should not have been admitted into evidence in the defendant's trial for child molestation because the conversations were privileged communications under O.C.G.A. §§ 24-9-24 and 43-39-16. However, the witness stated that individual psychotherapy was performed while employed at a community mental health center, and that the witness never held out as a psychologist or psychiatrist and that the witness did not have a medical degree but held a BA in social work; thus, the witness was not a licensed applied psychologist and the communications were not privileged. *White v. State*, 180 Ga. App. 185, 348 S.E.2d 728 (1986).

Psychologist-patient privilege set forth in O.C.G.A. § 43-39-16 arises only when a patient voluntarily seeks treatment from the psychologist, not where a defendant saw the psychologist at the instigation of a state agency and received no treatment. *In re R.M.*, 194 Ga. App. 888, 392 S.E.2d 13 (1990); *In re M.N.H.*, 237 Ga. App. 471, 517 S.E.2d 344 (1999), overruled in part by *State v. Herendeen*, 279 Ga. 323, 613 S.E.2d 647 (2005).

When a psychiatrist or psychologist is appointed by the court to conduct a preliminary examination of a criminal defendant, the psychiatrist or psychologist is a witness for the court, and the privilege concerning communications with a client does not apply. *Christenson v. State*, 261 Ga. 80, 402 S.E.2d 41 (1991), cert. denied, 502 U.S. 855, 112 S. Ct. 166, 116 L. Ed. 2d 130 (1991).

Since the psychologist-patient privilege set forth in O.C.G.A. § 43-39-16 arises only when the patient voluntarily seeks treatment, the communications between a mother and a psychologist in the course of a court-ordered mental evaluation were not privileged, and there was no error in admitting evidence of that evaluation. *In re L.H.*, 236 Ga. App. 132, 511 S.E.2d 253 (1999), overruled in part by *State v. Herendeen*, 279 Ga. 323, 613 S.E.2d 647 (2005).

Psychologist-patient privilege applied to treatment records, regardless of whether that treatment was voluntary;

when treatment of children had been directed by a case plan and a juvenile court, an in camera inspection of records sought in a criminal prosecution arising out of facts developed in the dependency investigation was proper, but the case was remanded for the trial court to consider in the court's examination the established parameters of the psychotherapist-patient privilege. *Herendeen v. State*, 268 Ga. App. 113, 601 S.E.2d 372 (2004), aff'd, 279 Ga. 323, 613 S.E.2d 647 (2005).

Communications between psychiatrist and patient are privileged. — Trial court did not err in directing a passenger to release the passenger's mental-health records to an employer because the employer was entitled to the discovery of information disclosing whether the passenger was treated for mental-health-related issues prior to the accident involving its employee and/or the dates of the employee's pre-accident treatment for mental health issues; the mental-health professional and patient privilege covers communications and admissions between the patient and the mental-health professional, and any information that the professional holds which has its origins in those communications, but the fact of employment of or treatment by a mental health provider and the dates thereof do not fall within the mental health privilege and may be disclosed. *Mincey v. Ga. Dep't of Cmty. Affairs*, 308 Ga. App. 740, 708 S.E.2d 644 (2011).

Privilege not waived. — Trial court erred in requiring a passenger to produce any confidential communications made between the passenger and the passenger's mental-health-care providers because the passenger's handling of discovery, albeit troublesome, did not amount to a decisive and unequivocal waiver of the passenger's mental-health privilege as the law required; the passenger's arguably misleading responses to opposing counsel's questions regarding a previous diagnosis of depression did not amount to a "decisive" and "unequivocal" waiver of the mental-health privilege, and the passenger's decision to answer the deposition question posed to the passenger (whether the passenger suffered from a history of depression), rather than object to it at the

time the issue of depression was raised, did not constitute an explicit waiver of the privilege. *Mincey v. Ga. Dep't of Cmty. Affairs*, 308 Ga. App. 740, 708 S.E.2d 644 (2011).

Counsel's strategy in admitting psychological evidence or testimony. — Defendant failed to show that trial counsel's failure to object to the admission of a court-appointed psychologist's statements was indicative of ineffectiveness

and was not a conscious and deliberate trial strategy. *Johnson v. State*, 255 Ga. App. 544, 566 S.E.2d 353 (2002), overruled in part by *State v. Herendeen*, 279 Ga. 323, 613 S.E.2d 647 (2005).

Cited in *Emmett v. State*, 232 Ga. 110, 205 S.E.2d 231 (1974); *McGraw v. State*, 199 Ga. App. 389, 405 S.E.2d 53 (1991); *In the Interest of M.E.*, 265 Ga. App. 412, 593 S.E.2d 924 (2004).

RESEARCH REFERENCES

ALR. — Privilege in judicial or quasi-judicial proceedings, arising from relationship between psychiatrist or psychologist and patient, 44 ALR3d 24.

Statute of limitations applicable to

third person's action against psychiatrist, psychologist, or other mental health practitioner, based on failure to warn persons against whom patient expressed threats, 41 ALR4th 1078.

43-39-17. Use of title "psychologist."

Except as provided in Code Section 43-39-7, a person shall not practice psychology and shall not use the title "psychologist" unless he or she is licensed as provided in this chapter. A person who is not licensed as provided in this chapter shall not designate his or her occupation as a psychologist and shall not designate himself or herself by any other term or title which implies that he or she is practicing psychology. (Ga. L. 1951, p. 408, § 19; Ga. L. 1986, p. 473, § 1; Ga. L. 1991, p. 1147, § 7; Ga. L. 1993, p. 355, § 3.)

Cross references. — False or fraudulent advertising, § 10-1-420 et seq.

JUDICIAL DECISIONS

Cited in *Cranford v. Cranford*, 120 Ga. App. 470, 170 S.E.2d 844 (1969).

43-39-18. Injunctions against violators.

The board is authorized to bring an action to enjoin any person, firm, or corporation who, without being licensed to practice psychology by the board, engages in the practice of psychology as regulated by this chapter. The proceeding shall be filed in the county in which such person resides or in the county where the firm or corporation maintains a principal office. If it shall be made to appear that such person, firm, or corporation is practicing psychology without a license, the injunction shall be issued and such person, firm, or corporation shall be permanently enjoined from practicing psychology throughout the state. It

shall not be necessary, in order to obtain the equitable relief described in this Code section, for the board to allege and prove there is no adequate remedy at law. It is declared that such unlicensed activities are a menace and a nuisance and are dangerous to public health, safety, and welfare. (Ga. L. 1964, p. 256, § 4; Ga. L. 1986, p. 473, § 1.)

43-39-19. Penalty.

Any person who violates this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined no less than \$100.00 nor more than \$1,000.00 and may be imprisoned for a term not to exceed 12 months for such violation. (Ga. L. 1951, p. 408, § 20; Ga. L. 1986, p. 473, § 1; Ga. L. 1993, p. 355, § 4.)

JUDICIAL DECISIONS

Ga. L. 1951, p. 408, § 20 (see O.C.G.A. § 43-39-19) has no relation to breaches of privilege under Ga. L. 1951, p. 408, § 18 (see O.C.G.A. § 43-39-16), but has reference only to Ga. L. 1951, p. 408, §§ 6, 7, and 19 (see

O.C.G.A. §§ 43-39-7, 43-39-8, and 43-39-17), which deal with the practice of applied psychology without a license. *Cranford v. Cranford*, 120 Ga. App. 470, 170 S.E.2d 844 (1969).

43-39-20. Immunity from civil and criminal liability for certain good faith actions.

Any psychologist licensed under this chapter who testifies in good faith without fraud or malice in any proceeding relating to a licensee's or applicant's fitness to practice psychology, or who in good faith and without fraud or malice makes a report or recommendation to the board in the nature of peer review, shall be immune from civil and criminal liability for such actions. No psychologist licensed under this chapter who serves as a supervising or monitoring psychologist pursuant to a public or private order of the board shall be liable for any damages in an action brought by the supervised or monitored psychologist, provided that the supervising or monitoring psychologist was acting in good faith without fraud or malice. (Code 1981, § 43-39-20, enacted by Ga. L. 1994, p. 224, § 6; Ga. L. 1999, p. 81, § 43.)

Editor's notes. — Former Code Section 43-39-20, relating to the termination of the State Board of Examiners of Psychologists, was part of the original Code enactment (Ga. L. 1981, Ex. Sess., p. 8)

and was amended by Ga. L. 1986, p. 473, § 1 and Ga. L. 1992, p. 2769, § 1 and repealed by Ga. L. 1992, p. 3137, § 31, effective July 1, 1992.

CHAPTER 39A

REAL ESTATE APPRAISERS

Sec.		Sec.	
43-39A-1.	Short title.	43-39A-14.1.	Requirements for the establishment and maintenance of a real estate appraisal management company.
43-39A-2.	Definitions.	43-39A-15.	Hearings in accordance with "Georgia Administrative Procedure Act."
43-39A-3.	Georgia Real Estate Appraisers Board; membership; qualifications; recusal for conflict of interest; terms; removal; meetings; compensation.	43-39A-16.	Notification by appraiser of change of address; professional corporations.
43-39A-4.	Fees.	43-39A-17.	Civil actions.
43-39A-4.1.	Rules and regulations.	43-39A-18.	Penalties for violations; unfair trade practices; civil judgments.
43-39A-5.	Status of appraiser classification issued by board to employee of commission.	43-39A-18.1.	Alternative disciplinary procedures; citations.
43-39A-6.	Seal; records.	43-39A-19.	Use of title or terms denoting appraiser classification; federally related transactions; no issuance of classification to business entity.
43-39A-7.	Applications for appraiser classification; registration; confidentiality.	43-39A-20.	Use of appraiser as disinterested third party for rendering unbiased valuation or analysis; "specialized services"; contingent fees.
43-39A-8.	Establishment of appraiser classifications complying with federal law; continuing education courses required for renewal of classification; approval of instructors.	43-39A-21.	Hearings on imposition of sanctions against appraisers; judicial review.
43-39A-9.	Requirements for nonresident applicants; service of process; reciprocity; temporary permits.	43-39A-22.	Investigations; subpoenas; confidentiality; access to records; publication of names of disciplined appraisers and schools; closed meetings.
43-39A-10.	Wall certificates and pocket cards; disclosure of classification and number.	43-39A-22.1.	Conviction data defined; fingerprint records check; disclosure.
43-39A-11.	Fees for examination, activation, and renewal; reactivation of lapsed or inactive appraiser classifications; other fees; extensions for appraisers suffering uninsured losses in disaster areas.	43-39A-23.	Injunctions.
43-39A-12.	Disposition of fees collected.	43-39A-24.	Unlawful to operate without appraiser classification; exceptions.
43-39A-13.	Power of board to regulate, discipline, and establish standards; power to enter contracts.	43-39A-25.	Certain actions relating to appraisal activity as constituting crimes; cease and desist orders; fine.
43-39A-14.	Required conduct of applicants; refusal of classification; imposition of sanctions; revocation of classification; noncompliance with child support orders; borrowers in default.	43-39A-26.	Penalty.
		43-39A-27.	Termination [Repealed].

Administrative rules and regulations. — Substantive regulations, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Real Estate Appraisers Board, Chapter 539-1.

Law reviews. — For note on the 1994 amendments of O.C.G.A. §§ 43-39A-6, 43-39A-8 to 43-39A-9, 43-39A-14, 43-39A-18 of O.C.G.A. Ch. 39A, T. 43, see 11 Georgia St. U.L. Rev. 236 (1994).

43-39A-1. Short title.

This chapter shall be known and may be cited as the “Real Estate Appraiser and Real Estate Appraisal Management Company Classification and Regulation Act.” (Code 1981, § 43-39A-1, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1992, p. 1402, § 1; Ga. L. 2010, p. 765, § 1/HB 1050.)

The 2010 amendment, effective August 31, 2010, inserted “and Real Estate Appraisal Management Company”.

43-39A-2. Definitions.

As used in this chapter, the term:

(1) “Analysis” means a study of real estate or real property other than one estimating value.

(2) “Appraisal” or “real estate appraisal” means an analysis, opinion, or conclusion prepared by an appraiser relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate. An appraisal may be classified by subject matter into either a valuation or an analysis.

(3)(A) “Appraisal management company” means a person who for compensation:

(i) Functions as a third-party intermediary between an appraiser and a user of real estate appraisal services;

(ii) Administers a network of appraisers performing real estate appraisal services as independent contractors;

(iii) Enters into an agreement to provide real estate appraisal services with a user of such services and one or more appraisers performing such services as independent contractors; or

(iv) Otherwise serves as a third-party broker of appraisal services.

(B) “Appraisal management company” does not include:

(i) Any person licensed to practice law in this state who orders an appraisal in connection with a bona fide client relationship when that person directly contracts with an appraiser;

(ii) Any person who contracts with an appraiser acting as an independent contractor for the completion of a real estate appraisal assignment and who, upon the completion of such an assignment, cosigns the appraisal report with the appraiser who is acting as an independent contractor;

(iii) Any federal, state, or local government or any of its departments, agencies, or authorities that order appraisals; or

(iv) Any person who orders an appraisal on behalf of any federal, state, or local government or its departments, agencies, or authorities as an employee thereof.

(4) "Appraisal management services" means services performed by an appraisal management company and may include, but are not limited to, such activities as recruiting appraisers, contracting with appraisers to perform real estate appraisal activity, negotiating fees for appraisals, receiving appraisal orders and appraisal reports, and submitting appraisal reports received from appraisers to clients.

(5) "Appraisal report" means any communication, written or oral, of an appraisal. For purposes of this chapter, the testimony of an appraiser dealing with the appraiser's analyses, conclusions, or opinions concerning identified real property is deemed to be an oral appraisal report.

(6) "Appraisal review" means the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal assignment, except that an examination of an appraisal for grammatical, typographical, or other similar errors shall not be an appraisal review.

(7) "Appraisal Subcommittee" means the designees of the heads of the federal financial institutions regulatory agencies established by the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. Section 3301, et seq.), as amended.

(8) "Appraiser" means any person who, for a valuable consideration or with the intent or expectation of receiving the same from another, engages in real estate appraisal activity on any type of real estate or real property.

(9) "Appraiser classification" means any category of appraiser which the board creates by designating criteria for qualification for such category and by designating the scope of practice permitted for such category, including the registration of real estate appraisal management companies.

(10) "Appraiser panel" means a group of independent appraisers selected to perform an appraisal valuation or analysis for an appraisal management company.

(11) "Board" means the Georgia Real Estate Appraisers Board established pursuant to the provisions of this chapter.

(12) "Certified appraisal" or "certified appraisal report" means an appraisal or appraisal report given, signed, and certified as such by a certified real estate appraiser. A certified appraisal or appraisal report represents to the public that it meets the appraisal standards defined in this chapter.

(13) "Client" means any person who enters into an agreement with an appraiser or an appraisal management company for the performance of real estate appraisal activity.

(14) "Commission" means the Georgia Real Estate Commission created in Code Section 43-40-2.

(15) "Commissioner" means the real estate commissioner.

(16) "Controlling person" means:

(A) An owner, officer, or director of a corporation, partnership, or other business entity seeking to offer appraisal management services in this state;

(B) An individual employed, appointed, or authorized by an appraisal management company who has the authority to enter into a contractual relationship with other persons for the performance of appraisal management services and has the authority to enter into agreements with appraisers for the performance of appraisals; or

(C) An individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company.

(17) "Evaluation assignment" means an engagement for which an appraiser is employed or retained to give an analysis, opinion, or conclusion that relates to the nature, quality, or utility of identified real estate or identified real property.

(18) "Federally related transaction" means any real estate related financial transaction which (A) a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates; and (B) requires the services of an appraiser.

(19) "Independent appraisal assignment" means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion relating to the nature, quality, value, or utility of identified real estate or identified real property.

(20) "Owner" means any person who owns 5 percent or more of an appraisal management company.

(21) "Person" means an individual, partnership, limited liability company, limited partnership, corporation, association, or any other legal or commercial entity.

(22) "Real estate" means condominiums and leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere. Such term also includes any structure or structures equipped with the necessary service connections and made so as to be readily moveable as a unit or units when such a structure is affixed to land.

(23) "Real estate appraisal activity" means the act or process of valuation of real estate or real property and preparing an appraisal report.

(24) "Real estate related financial transaction" means any transaction involving:

(A) The sale, lease, purchase, or exchange of or investment in real estate or real property or the financing thereof;

(B) The refinancing of real estate or real property; and

(C) The use of real estate or real property as security for a loan or investment, including mortgage backed securities.

(25) "Real property" means one or more defined interests, benefits, and rights inherent in the ownership of real estate.

(26) "Specialized services" means services, other than independent appraisal assignments which are performed by an appraiser. Specialized services may include marketing, financing, and feasibility studies; valuations; analyses; and opinions and conclusions given in connection with activities such as real estate brokerage, mortgage banking, real estate counseling, and real estate tax counseling.

(27) "State" means any state, district, territory, possession, or province of the United States or Canada and any sovereign nation or any political subdivision of such sovereign nation.

(28) "Valuation" means an estimate of the value of real estate or real property.

(29) "Valuation assignment" means an engagement for which an appraiser is employed or retained to give an analysis, opinion, or conclusion that estimates the value of an identified parcel of real estate or identified real property at a particular point in time. (Code 1981, § 43-39A-2, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1991,

p. 266, § 1; Ga. L. 1992, p. 1402, § 1; Ga. L. 1997, p. 405, § 1; Ga. L. 2003, p. 370, § 1; Ga. L. 2010, p. 765, § 2/HB 1050; Ga. L. 2011, p. 752, § 43/HB 142.)

The 2010 amendment, effective August 31, 2010, rewrote this Code section.

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted “who contracts” for “that contracts” near the beginning of division (3)(B)(ii).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, “corporeal” was substituted for “corporal” in paragraph (14) (now (22)).

43-39A-3. Georgia Real Estate Appraisers Board; membership; qualifications; recusal for conflict of interest; terms; removal; meetings; compensation.

(a) There is created the Georgia Real Estate Appraisers Board, which shall consist of five members. All members must be residents of Georgia. One member shall be a public member. The public member of the board shall not be connected in any way with the practice of real estate appraisal, real estate brokerage, or mortgage lending. Four members shall be real estate appraisers who have been actively engaged in the real estate appraisal business for at least three years. In appointing real estate appraisers to the board, while not automatically excluding other appraisers, the Governor shall give preference to real estate appraisers who do not hold an active, occupational license which authorizes their work in real estate brokerage or mortgage lending activities, who do not have a financial interest in any real estate brokerage firm or mortgage lending firm, and who are not employees of real estate brokerage firms or mortgage lending firms.

(b) The Governor shall appoint the members of the board, subject to confirmation by the Senate, with consideration given to appropriate geographic representation and to areas of appraisal expertise. Any such appointments made when the Senate is not in session shall be effective until acted upon by the Senate.

(c) A member of the board shall recuse himself or herself from voting on matters in which the member has a conflict of interest. Whenever an investigation authorized by this chapter results in the board’s initiating a contested case under Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” against a member, such member shall be recused from voting on such matter and may not discuss the matter with other board members or be present when the board discusses or votes on such matter.

(d) The term of each member of the board shall be five years, except that one of the successors to the two members first appointed to serve until July 1, 1992, shall be appointed to serve until July 1, 1994, and

one of the successors to the two members first appointed to serve until July 1, 1993, shall be appointed to serve until July 1, 1995. In the event of a vacancy, the Governor shall appoint a person to fill such vacancy and the person so appointed shall serve for the remainder of the unexpired term.

(e) Upon expiration of their terms, members of the board shall continue to hold office until the appointment and qualification of their successors. The Governor, after giving notice and opportunity for a hearing, may remove from office any member of the board for any of the following:

(1) Inability to perform or neglecting to perform the duties required of members;

(2) Incompetence;

(3) Dishonest conduct; or

(4) Having a disciplinary sanction other than a citation authorized by this chapter imposed by any professional licensing agency on such member's right to practice a trade or profession.

(f) The members of the board shall annually elect a chairperson from among the members to preside at board meetings.

(g) The board shall meet at least once each calendar quarter, or as often as is necessary, and remain in session as long as the chairperson shall deem it necessary to give full consideration to the business before the board. A quorum of the board shall be three members. Members of the board or others may be designated by the chairperson of the board, in a spirit of cooperation, to confer with similar boards of other states, attend interstate meetings, and generally do such acts and things as may seem advisable to the board in the advancement of the profession and the standards of real estate appraisal activity.

(h) Each member of the board shall receive as compensation for each day actually spent on his or her official duties at scheduled meetings and for time actually required in traveling to and from its meetings, not to exceed one day's traveling time, the sum of \$25.00 and his or her actual and necessary expenses incurred in the performance of official duties.

(i) The commission shall supply staff support for the board. The commissioner shall serve as executive officer of the board. The commissioner shall be charged with the duties and powers as delegated by the board. (Code 1981, § 43-39A-3, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1991, p. 266, § 2; Ga. L. 1992, p. 1402, § 1; Ga. L. 2000, p. 1527, § 4; Ga. L. 2006, p. 792, § 1/SB 547.)

Administrative rules and regulations. — Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Real Estate Appraisers Board, Chapter 539-1, et seq.

43-39A-4. Fees.

The board is authorized to establish the amount of any fee which it is authorized by this chapter to charge and collect. Each fee so established shall be reasonable and shall be determined in such a manner that the total amount of fees charged and collected by the board shall approximate the total of the direct and indirect costs to the state of the operations of the board. (Code 1981, § 43-39A-4, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1992, p. 1402, § 1.)

43-39A-4.1. Rules and regulations.

Notwithstanding any provision of law to the contrary, with respect to any form or application required to be completed by an applicant or an appraiser, or with respect to any document required to be issued by the board, the board is authorized to promulgate rules and regulations setting forth:

- (1) Any procedure that will reduce the use of paper forms, applications, or documents;
- (2) Any procedure that will reduce the necessity for the board to maintain paper documents;
- (3) The procedure for submitting or issuing any such form, application, or document by facsimile or electronic means; and
- (4) The procedure for satisfying any signature requirement on any such form by electronic signature, voice signature, or other means so long as appropriate security measures are implemented that assure security and verification of any required signature.

As used in this Code section, the term “electronic signature” shall have the same meaning as provided in Code Section 10-12-2. (Code 1981, § 43-39A-4.1, enacted by Ga. L. 1999, p. 715, § 1; Ga. L. 2009, p. 698, § 5/HB 126.)

The 2009 amendment, effective July 1, 2009, substituted “Code Section 10-12-2” for “Code Section 10-12-3” at the end of the ending undesignated paragraph.

43-39A-5. Status of appraiser classification issued by board to employee of commission.

Any appraiser classification issued to an employee of the commission by the board shall be on inactive status during the time of the

employee's employment with the commission. Any such employee shall not be required to pay a fee to keep an appraiser classification on an inactive status. Such appraiser classification shall be taken off inactive status and returned to the employee when that person's employment ends. (Code 1981, § 43-39A-5, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1992, p. 1402, § 1.)

43-39A-6. Seal; records.

(a) The board shall adopt a seal, which may be either an engraved or ink stamp seal, with the words "Real Estate Appraisers Board, State of Georgia" and such other device as the board may desire included thereon, by which it shall authenticate the acts of the board. Copies of all records and papers in the office of the board, certified by the signature of the real estate commissioner or the commissioner's designee and the seal of the board, shall be received in evidence in all cases equally and with like effect as the originals.

(b) The board shall maintain records so that it may certify the history of appraisers or any person issued an appraisal management company registration under this chapter for a period of up to five years preceding the date of certification. The board may certify the classification history of an appraiser or appraisal management company based on electronic data that it maintains. When that electronic data is derived from a paper record, upon converting the information on the paper record to electronic form and after verification of the electronic record, the board may:

(1) Properly destroy the paper record; or

(2) Retain the paper record for a period of time determined by the board. (Code 1981, § 43-39A-6, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1992, p. 1402, § 1; Ga. L. 1994, p. 881, § 1; Ga. L. 1996, p. 6, § 43; Ga. L. 1999, p. 715, § 2; Ga. L. 2010, p. 765, § 3/HB 1050.)

The 2010 amendment, effective August 31, 2010, in the introductory language of subsection (b), inserted "or any person issued an appraisal management

company registration under this chapter" in the first sentence; and inserted "or appraisal management company" in the second sentence.

43-39A-7. Applications for appraiser classification; registration; confidentiality.

(a) Any person desiring to act as a real estate appraiser must file an application for an appraiser classification with the board. All original and subsequent applications filed with the board shall be in such form and detail as the board shall prescribe, setting forth the following:

(1) The name and address of the applicant and the name under which the applicant intends to conduct business;

(2) The place or places, including the city with the street and street number, if any, where the business is to be conducted; and

(3) Such other information as the board shall require.

(b)(1) No person shall directly or indirectly engage or attempt to engage in business as an appraisal management company, directly or indirectly engage or attempt to perform appraisal management services, or advertise or hold itself out as engaging in or conducting business as an appraisal management company without first obtaining a registration issued by the board.

(2) The registration required by paragraph (1) of this subsection shall, at a minimum, include the following:

(A) Name of the entity seeking registration;

(B) Business address of the entity seeking registration which must be located and maintained within this state;

(C) Telephone contact information of the entity seeking registration;

(D) If the entity is not a corporation that is domiciled in this state, the name and contact information for the company's agent for service of process in this state;

(E) The name, address, and contact information for any individual or any corporation, partnership, or other business entity that owns 5 percent or more of the appraisal management company;

(F) The name, address, and contact information for a designated controlling person to be the primary communication source for the board;

(G) A certification that the entity has a system and process in place to verify that a person being added to the appraiser panel of the appraisal management company for appraisal services to be performed in Georgia holds a license or certification in good standing in Georgia pursuant to this chapter;

(H) A certification that the entity has a system in place to review the work of all appraisers who are performing real estate appraisal services for the appraisal management company on a periodic basis to validate that the real estate appraisal services are being conducted in accordance with the standards for real estate appraisals established by the board;

(I) A certification that the entity maintains a detailed record of each service request that it receives for appraisal services within

the State of Georgia and the name, address, and telephone number of the appraiser who performs the requested real estate appraisal services for the appraisal management company;

(J) An irrevocable consent to service of process; and

(K) Any such other information as the board shall require.

(3) The board shall issue a unique registration number to each appraisal management company.

(4) The board shall publish annually a list of the appraisal management companies that have registered pursuant to this chapter and have been issued a registration number.

(5) An appraisal management company shall be required to disclose the registration number on each engagement letter utilized in assigning an appraisal request for real estate appraisal assignments within the State of Georgia.

(b.1) Any employee or independent contractor of an appraisal management company who performs appraisal review services must be an individual who holds a valid appraiser license or certification issued pursuant to this chapter.

(c) Notwithstanding any provision of Article 4 of Chapter 18 of Title 50 to the contrary, all applications, including supporting documents and other personal information submitted by applicants, classified appraisers, and appraisal management companies as part of an application filed with the board, shall be confidential. The board shall deem as public records the following information and shall make such information reasonably available for inspection by the general public: an appraiser's name, classification number and status, business name, business address, business telephone number, type of classification held, and term of classification; the fact that an appraiser has or has not received a disciplinary sanction; and such other information pertaining to the classification of an appraiser or approval of a school, course, or instructor as the board may determine by rule. (Code 1981, § 43-39A-7, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1992, p. 1402, § 1; Ga. L. 2000, p. 1527, § 5; Ga. L. 2010, p. 765, § 4/HB 1050.)

The 2010 amendment, effective August 31, 2010, added present subsections (b) and (b.1); redesignated former subsection (b) as present subsection (c); and, in

subsection (c), substituted "applicants, classified appraisers, and appraisal management companies" for "applicants and classified appraisers" in the first sentence.

43-39A-8. Establishment of appraiser classifications complying with federal law; continuing education courses required for renewal of classification; approval of instructors.

(a) The board is authorized to establish through its rules and regulations such appraiser classifications as are necessary to comply with federal law in order to assure that Georgia has appropriate classifications of appraisers authorized to appraise in federally related transactions. The board shall also create a classification of appraiser to appraise in nonfederally related transactions and for which applicants need only to meet education standards established by the board through its rules and regulations.

(a.1) In order to qualify to become an applicant for an appraiser classification or approval, an individual shall:

- (1) Have attained the age of 18 years;
- (2) Be a resident of the State of Georgia, unless that person has fully complied with the provisions of Code Section 43-39A-9;
- (3) Have attained the level of education that the board may establish through its rules and regulations;
- (4) Have complied fully with the requirements of subsection (b) of Code Section 43-39A-14 regarding any criminal convictions;
- (5) Furnish evidence of completion of the instructional hours in any course of study the board may require through its rules and regulations; and
- (6) Stand and pass an examination administered by or approved by the board covering generally the matters confronting real property appraisers after completing the requirements of paragraph (5) of this subsection.

Failure to meet any of these requirements shall be grounds for denial of classification or approval without a hearing.

(b) As a prerequisite to renewal of an appraiser classification, an appraiser shall present evidence satisfactory to the board of having successfully completed or instructed, during the immediately preceding renewal period, a board approved continuing education course or courses of not less than ten hours of in-class instruction for each year of the renewal period. No appraiser whose appraiser classification has been placed on inactive status shall be allowed to reactivate such appraiser classification unless the provisions of this subsection are met in addition to any other requirements of this chapter.

(c) The board, through its rules and regulations, shall establish standards for offering of all education courses required by this Code

section and for the approval of schools and instructors to offer the education courses required by this chapter. Each approved school must comply with Code Sections 43-40-15 through 43-40-31. Each approved school must designate an individual approved by the board to act as its director and such designated individual shall be responsible for assuring that the approved school complies with the requirements of this chapter and rules and regulations promulgated under this chapter. No school approval shall be granted to a school unless the school authorizes its director to bind the school to any settlement of a contested case before the board as defined in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Violations of this chapter or its attendant rules and regulations by an approved school shall subject the school and its director to sanction as authorized by this chapter.

(d) Failure to complete any of the educational requirements as provided in this Code section shall be grounds for denial of an appraiser classification or denial of renewal of an appraiser classification without further hearing. No fees or portion of fees paid shall be refunded if an appraiser fails to meet the continuing education provisions of this chapter.

(e) An instructor in any education course approved by the board must also be approved by the board and, where the board deems necessary, receive any special instruction that the board may require.

(f) The board may prepare and distribute to appraisers under this chapter educational material deemed of assistance in the conduct of their business. The board may prepare and distribute to the public educational material deemed of assistance to consumers engaging in business in real estate appraisals with persons classified under this chapter. (Code 1981, § 43-39A-8, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1991, p. 94, § 43; Ga. L. 1991, p. 266, § 3; Ga. L. 1992, p. 1402, § 1; Ga. L. 1994, p. 881, § 2; Ga. L. 1996, p. 194, § 1; Ga. L. 2003, p. 370, § 2; Ga. L. 2006, p. 792, § 2/SB 547; Ga. L. 2007, p. 483, § 2/SB 114.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, "43-40-31" was substituted for "43-40-32" in the second sentence of subsection (c).

Administrative rules and regula-

tions. — Standards for appraisal courses, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Real Estate Appraisers Board, Chapter 539-2.

43-39A-9. Requirements for nonresident applicants; service of process; reciprocity; temporary permits.

(a) Every applicant for an appraiser classification under this chapter who is not a resident of Georgia shall submit, with the application for an appraiser classification, an irrevocable consent that service of process upon the applicant may be made by delivery of the process to

the real estate commissioner, if, in an action against the applicant in a court of Georgia arising out of the applicant's activities as an appraiser, the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant.

(b) A nonresident of Georgia who has complied with the provisions of subsection (a) of this Code section may obtain an appraiser classification by conforming to all of the provisions of this chapter relating to the license or certification sought.

(c) An applicant who has an appraiser classification in another state under such state's laws which are designed to comply with 12 U.S.C. Section 3301, et seq., may obtain a similar appraiser classification as an appraiser in Georgia upon, at the time of filing an application:

(1) Meeting the requirements of subsection (a) of this Code section;

(2) Paying any required fees;

(3) Providing any documentation required by the board of the applicant's classification in any other state and copies of the records of any disciplinary actions taken against the applicant's appraiser classification in that or other states. The imposition of a disciplinary action by any other lawful licensing authority may be grounds for denial of an appraiser classification to a nonresident or for suspension or revocation of the appraiser classification issued to a nonresident;

(4) Agreeing in writing to cooperate with any investigation initiated under this chapter by promptly supplying any documents any authorized investigator of the board may request and by personally appearing in the board's offices or other location in Georgia as the board's investigator may request. If the board sends by certified mail or statutory overnight delivery to the last known business address of a nonresident appraiser a notice to produce documents or to appear for an interview with an authorized investigator or the board and the nonresident appraiser fails to comply with that request, the board may impose on the nonresident appraiser any disciplinary sanction permitted by this chapter; and

(5) Signing a statement that the applicant has read this chapter and its rules and regulations and agrees to abide by its provisions in all real estate appraisal activity in Georgia.

(d) The board is authorized to promulgate rules consistent with guidelines established by the Appraisal Subcommittee for the granting of a temporary practice permit to an appraiser classified in another state in order to allow such appraiser to perform an appraisal for a single federally related transaction on property located in this state.

(e) The board in its discretion may enter into written agreements with similar regulatory authorities of other states as may be necessitated by those states' laws to assure for Georgia appraisers nonresident classification opportunities comparable to those afforded to nonresidents by this Code section. Whenever the board determines that another state does not offer nonresident classification to Georgia appraisers with requirements substantially comparable to those afforded to appraisers of that state by this Code section, the board shall require appraisers of such state who apply for nonresident classification to meet education, experience, and examination requirements substantially comparable to those required by that state with respect to Georgia appraisers who seek nonresident classification.

(f) Notwithstanding any other provision of this Code section, the board in its discretion may enter into written agreements with similar regulatory authorities of other states to permit appraisers classified in those states to conduct real property appraisal activities in Georgia without obtaining a classification in Georgia, provided that such other states afford the same opportunities to Georgia appraisers. (Code 1981, § 43-39A-9, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1991, p. 266, § 4; Ga. L. 1992, p. 1402, § 1; Ga. L. 1994, p. 881, § 3; Ga. L. 1997, p. 405, § 1.1; Ga. L. 2000, p. 1527, § 6; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to subsection (c)(4) is applicable with respect to notices delivered on or after July 1, 2000.

43-39A-10. Wall certificates and pocket cards; disclosure of classification and number.

(a) The board shall prescribe the form of a wall certificate to denote an individual's appraiser classification. The board shall mail the wall certificate to the appraiser whose duty it shall be to display the wall certificate conspicuously in the appraiser's place of business. The board shall also prepare and deliver a pocket card indicating the appraiser classification of the person whose name appears thereon.

(b) An appraiser classification issued under authority of this chapter shall bear a number assigned by the board. The board through its rules and regulations shall establish standards which require appraisers to disclose their appraiser classification and number assigned by the board in all appraisal reports and in all statements of qualifications, contracts, or other instruments used by the appraiser when reference is made to his or her appraiser classification status.

(c) Wall certificates and pocket cards shall remain the property of the board and, upon any suspension or revocation of an appraiser classification pursuant to this chapter, the individual holding the related wall

certificate or pocket card shall immediately return such wall certificate or pocket card to the board. (Code 1981, § 43-39A-10, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1992, p. 1402, § 1.)

43-39A-11. Fees for examination, activation, and renewal; reactivation of lapsed or inactive appraiser classifications; other fees; extensions for appraisers suffering uninsured losses in disaster areas.

(a) To pay its share of the expense of the maintenance and operation of the office of the commission and the enforcement of this chapter, the board shall establish reasonable fees in accordance with Code Section 43-39A-4 and in accordance with its rule-making authority. No fee or portion of a fee required under this chapter which is paid to the board shall be refunded. Each appraiser shall be responsible for paying his or her own fees.

(b) If the board administers an examination, at the time an application for examination is submitted, the board shall collect from the applicant a fee for the examination and an investigation fee if necessary. If an applicant fails to pass an examination, upon filing a new application and paying an additional fee, the applicant may take another examination as soon as scheduling permits.

(c) Prior to the issuance of an original appraiser classification, each applicant shall pay an activation fee in advance as established by the board.

(d) All appraiser classifications shall be renewed periodically as determined by the board in its rules and regulations, and the board shall charge a fee for any such appraiser classification renewed. The time for renewal of an appraiser classification and the number of years for which it may be renewed shall be in the discretion of the board. All fees shall be deposited into the state treasury for the expenses of the board. This Code section shall not obviate any other fees or conditions required to maintain such appraiser classification in accordance with this chapter. An appraiser classification not renewed in accordance with this subsection shall be lapsed.

(e) Applications and fees must be filed personally in the board's offices during regular business hours or may be mailed to the board's offices in a letter postmarked by the United States Postal Service. The board, through its rules and regulations, may establish standards for the filing of applications and fees by electronic means or by courier services.

(f) Any resident appraiser whose appraiser classification lapses for failure to pay a renewal fee may reactivate that appraiser classification

within two years of the date of its lapsing by paying the total amount of all renewal fees and late charges which would have been due during the period when the appraiser classification was lapsed plus a reactivation fee. If any resident appraiser allows an appraiser classification to lapse for a period longer than two years due solely to a failure to pay a renewal fee, the resident appraiser may have that appraiser classification reinstated by paying the total amount of all renewal fees and late charges which would have been due during the period when the appraiser classification was lapsed plus a reactivation fee and by successfully completing any educational course or courses which the board may require. Any resident appraiser whose appraiser classification has lapsed for longer than five years and who seeks to have that appraiser classification reinstated shall requalify as an original applicant as set forth in Code Section 43-39A-8. Any nonresident appraiser whose appraiser classification lapses for failure to pay a renewal fee may reactivate that appraiser classification by paying the fee required of an original applicant if such nonresident appraiser has maintained an active classification in his or her state of residence during the period that his or her classification lapsed. The board may refuse to renew an appraiser classification if the appraiser has continued to perform real estate appraisal activities following the lapsing of that appraiser classification.

(g) Any appraiser who does not wish to be actively engaged in real estate appraisal activity may continue an appraiser classification by making a written request within 30 days of ceasing work that the appraiser classification be placed on inactive status. Any appraiser whose appraiser classification has been placed on an inactive status may not engage in real estate appraisal activity. To reactivate an appraiser classification held on inactive status, an appraiser must make application to the board prior to resuming real estate appraisal activity. Any appraiser who seeks to reactivate an appraiser classification which has been placed on inactive status shall be required to meet any continuing education requirement which the appraiser might have otherwise been required to meet during the period when the appraiser's appraiser classification was placed on inactive status. The education requirement for activating an appraiser classification on inactive status shall not apply to an appraiser who meets the continuing education requirement of subsection (b) of Code Section 43-39A-8 in each renewal period that such appraiser is on inactive status nor to an appraiser who has maintained an active appraiser classification in another state that has continuing education requirements while such appraiser's classification was on inactive status in Georgia.

(h) Any appraiser who places an appraiser classification on inactive status shall be required to pay the renewal fee provided for in subsection (d) of this Code section. Whenever any appraiser on inactive

status fails to pay the required fee, the appraiser classification shall be lapsed. If an appraiser on inactive status changes address, the appraiser shall notify the board of the new address, in writing, within 30 days.

(i) Any check which is presented to the board as payment for any fee which the board is permitted to charge under this chapter and which is returned unpaid may be cause for denial of an appraiser classification or for imposing any sanction permitted by this chapter.

(j) Any school approved to offer required education courses under this chapter, except units of the University System of Georgia, and any instructor approved to teach any of such courses shall pay an original application fee and renewal fee as established by the board. If such an approval lapses, the school may reinstate the approval by paying the total amount of all renewal fees and late charges which would have been due during the period the approval was lapsed plus a reactivation fee.

(k) A reasonable fee, not to exceed the renewal fee charged for an appraiser classification, may be imposed by the board on any applicant or appraiser who:

(1) Fails to notify the board in writing within 30 days of a change of address;

(2) Fails to respond within 30 days to a written inquiry from the board requesting further information on any application the applicant or appraiser has filed with the board; or

(3) Submits to the board a check that is returned unpaid.

(l) The board is authorized to collect and forward to the Federal Financial Institutions Examination Council the annual registry fee required for appraisers who perform or seek to perform appraisals in federally related transactions as set forth in 12 U.S.C. Section 3338 and to submit to the Appraisal Subcommittee, no less than annually, a roster listing real estate appraisers who have appraiser classifications suitable for inclusion in the federal registry.

(m) Whenever an appraiser who resides in a county designated as a disaster area by state or federal authorities suffers uninsured major damage or loss to such appraiser's residence or place of business, the board may extend such appraiser's renewal period for up to two years without further payment of any fee by the appraiser upon satisfactory proof of the appraiser's uninsured major damage or loss. The board is further authorized to make appropriate adjustments in deadline dates mandated by this chapter for applications filed by applicants and appraisers located in counties designated as disaster areas by state or federal authorities.

(n) The board may through the establishment of rules or regulations require that an applicant for registration as a real estate appraisal management company provide proof of financial responsibility in the form of a surety bond, cash or property bond, or trust or escrow account to secure faithful performance of the standards required of an appraisal management company under this chapter. (Code 1981, § 43-39A-11, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1991, p. 266, § 5; Ga. L. 1992, p. 1402, § 1; Ga. L. 1995, p. 1216, § 1; Ga. L. 1996, p. 194, § 2; Ga. L. 1997, p. 405, § 2; Ga. L. 1998, p. 196, § 1; Ga. L. 2007, p. 483, § 3/SB 114; Ga. L. 2010, p. 765, § 5/HB 1050.)

The 2010 amendment, effective August 31, 2010, added subsection (n).

43-39A-12. Disposition of fees collected.

Except as provided for in subsection (l) of Code Section 43-39A-11, all fees collected pursuant to this chapter shall be deposited by the board into the state treasury. Out of the funds thus arising shall be paid the expenses contemplated in this chapter for the administration and enforcement of this chapter. All expenditures authorized by the board shall be paid from the funds received pursuant to this chapter. The expenses of the board and its support staff must always be kept within the income collected and deposited in accordance with this chapter; and the expenses thereof shall not be supported or paid from any other state fund or licensing authority. (Code 1981, § 43-39A-12, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1992, p. 1402, § 1.)

43-39A-13. Power of board to regulate, discipline, and establish standards; power to enter contracts.

The board, through its rules and regulations, shall have the full power to regulate the issuance of appraiser classifications and registrations, to discipline appraisers in any manner permitted by this chapter, to establish qualifications for appraiser classifications and registrations consistent with this chapter, to regulate approved courses, to establish standards for real estate appraisals, and to establish standards consistent with this chapter for appraisal management companies operating within the State of Georgia. Except for conducting an investigation as provided in this chapter, the board is authorized to enter into such contracts as are necessary to carry out its duties under this chapter; provided, however, the board may enter into contracts to assist it in the conduct of investigations authorized by this chapter only whenever it needs special legal or appraisal expertise or other extraordinary circumstances exist. Whenever the board contracts to perform such investigative functions, any such contractor working on an investigation authorized by this chapter shall be under the supervision of the

board or a duly authorized representative of the board. Any contractor used by the board shall be knowledgeable in the work area for which such contractor is retained. A contractor shall not be empowered to determine the disposition of any investigation nor to make any discretionary decision that the board is authorized by law to make. Notwithstanding any other provision of law, the board is authorized to retain all funds received as collection fees for use in defraying the cost of collection of fees required under this chapter. Any such funds not expended for this purpose in the fiscal year in which they are generated shall be deposited in the state treasury; provided, however, that nothing in this Code section shall be construed so as to allow the board to retain any funds required by the Constitution to be paid into the state treasury; provided, further, that the board shall comply with all provisions of Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act," except Code Section 45-12-92, prior to expending any such funds. (Code 1981, § 43-39A-13, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1992, p. 1402, § 1; Ga. L. 1997, p. 405, § 3; Ga. L. 2010, p. 765, § 6/HB 1050.)

The 2010 amendment, effective August 31, 2010, in the first sentence, inserted "and registrations" following "classifications" twice, deleted "and" preceding "to establish", and added ", and to estab-

lish standards consistent with this chapter for appraisal management companies operating within the State of Georgia" at the end.

43-39A-14. Required conduct of applicants; refusal of classification; imposition of sanctions; revocation of classification; noncompliance with child support orders; borrowers in default.

(a) Appraiser classifications shall be granted only to persons who bear a good reputation for honesty, trustworthiness, integrity, and competence to transact real estate appraisal activity in such manner as to safeguard the interests of the public and only after satisfactory proof of such qualifications has been presented to the board.

(b)(1) As used in this subsection, the term:

(A) "Conviction" means a finding or verdict of guilty or a plea of guilty to a charge of a felony or any crime involving moral turpitude, regardless of whether an appeal of the conviction has been brought; a sentencing to first offender treatment without an adjudication of guilt pursuant to a charge of a felony or any crime involving moral turpitude; or a plea of nolo contendere to a charge of a felony or any crime involving moral turpitude.

(B) "Felony" includes any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere.

(1.1) No person who has a conviction shall be eligible to become an applicant for a license or an approval authorized by this chapter unless such person has successfully completed all terms and conditions of any sentence imposed for such conviction; provided that if such individual has multiple convictions, at least five years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval; provided, further, that if such individual has a single conviction, at least two years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval.

(1.2) A person who has a conviction in a court of competent jurisdiction of this or any other state, district, or territory of the United States, or of a foreign country, shall be eligible to become an applicant for a licensure or an approval authorized by this chapter only if:

(A) Such person has satisfied all terms and conditions of any conviction such person may have had before making application for licensure or approval, provided that, if such individual has multiple convictions, at least five years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval; provided, further, that if such individual has been convicted of a single felony or of a single crime of moral turpitude, at least two years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval;

(B) No criminal charges for forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, a felony, a sex offense, a probation violation, or a crime involving moral turpitude are pending against the person; and

(C) Such person presents to the commission satisfactory proof that the person now bears a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a licensee in such a manner as to safeguard the interest of the public.

(2) Where an applicant for any classification or approval authorized by this chapter has been convicted in a court of competent jurisdiction of this or any other state, district, or territory of the United States or of a foreign country of the offense of forgery, embezzlement, obtaining money under false pretenses, theft, extortion, or conspiracy to defraud or other like offense or offenses or has been convicted of a felony, a sex offense, a probation violation, or a

crime involving moral turpitude, such conviction in itself may be a sufficient ground for refusal of a classification or approval. An applicant for any classification or approval authorized by this chapter who has been convicted of any offense enumerated in this paragraph may be issued a classification or approval by the board only if:

(A) The time periods identified in paragraph (1) of this subsection have passed since the applicant was convicted, sentenced, or released from any incarceration, whichever is later;

(B) No criminal charges are pending against the applicant; and

(C) The applicant presents to the board satisfactory proof that the applicant now bears a good reputation for honesty, trustworthiness, integrity, and competence to transact real estate appraisal activity in such a manner as to safeguard the interest of the public.

(c) Where an applicant or an appraiser has been found guilty of a violation of the federal fair housing law or Article 4 of Chapter 3 of Title 8 by an administrative law judge or a court of competent jurisdiction and after any appeal of such conviction is concluded, such conviction may in itself be a sufficient ground for refusal of an appraiser classification or the imposition of any sanction permitted by this chapter.

(d) Where an applicant or an appraiser has made a false statement of material fact on an application or caused to be submitted or been a party to preparing or submitting any falsified application to the board, such action may, in itself, be a sufficient ground for the refusal, suspension, or revocation of the appraiser classification.

(e) Grounds for suspension or revocation of an appraiser classification, as provided for by this chapter, shall also be grounds for refusal to grant an appraiser classification.

(f) The conduct provided for in subsections (a) through (d) and subsection (h) of this Code section which relates to the denial of an appraiser classification to an applicant shall also be grounds for the imposition of any sanction permitted by this chapter when the conduct is that of an appraiser.

(g) Whenever the board initiates an investigation as provided in Code Section 43-39A-22 to determine whether an appraiser has violated any provision of this chapter or the rules and regulations adopted pursuant to this chapter and such appraiser:

(1) Surrendered or surrenders an appraiser classification to the board;

(2) Allowed or allows an appraiser classification to lapse due to failure to meet education requirements provided by law; or

(3) Allowed or allows an appraiser classification to lapse due to failure to pay any required fees,

the board may issue an order revoking such appraiser's classification. The order will be effective ten days after the order is served on the appraiser unless the appraiser makes a written request for a hearing before the board, in which event the board will file a notice of hearing in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Service shall be accomplished as provided for in Code Section 43-39A-21. If such surrender or lapsing occurs after the board has filed a notice of hearing alleging that such appraiser has violated any provision of this chapter or the rules and regulations adopted pursuant to this chapter but before the board enters a final order in the matter, then upon submission of a new application by such person the matters asserted in the notice of hearing shall be deemed admitted and may be used by the board as grounds for refusal of a new appraiser classification to such person.

(h) Whenever any occupational licensing body of this state, any other state, or any foreign country has sanctioned any license or classification of an applicant for any appraiser classification or whenever such an applicant has allowed a license or classification to lapse or has surrendered a license or classification to any occupational licensing body of this state, any other state, or any foreign country after that occupational licensing body has initiated an investigation or a disciplinary process regarding such applicant's licensure or classification, such sanction, lapsing, or surrender in itself may be a sufficient ground for refusal of an appraiser classification. Whenever any occupational licensing body of this state, any other state, or any foreign country has revoked the license or classification of an applicant for a classification or whenever such an applicant has allowed a license or classification to lapse or has surrendered a license or classification to any occupational licensing body of this state, any other state, or any foreign country after that body has initiated an investigation or a disciplinary process regarding such applicant's license or classification, the board may issue an appraiser classification only if:

(1) At least five years have passed since the date that the applicant's occupational registration, license, or certification was revoked or surrendered;

(2) No criminal charges are pending against the applicant at the time of application; and

(3) The applicant presents to the board satisfactory proof that the applicant now bears a good reputation for honesty, trustworthiness, integrity, and competence to transact real estate appraisal activity in such a manner as to safeguard the interests of the public.

(i) Whenever any appraiser is convicted of any offense enumerated in subsection (b) of this Code section, such appraiser must immediately notify the board of that conviction. Such appraiser's appraiser classification shall automatically be revoked 60 days after the conviction unless the appraiser makes a written request to the board for a hearing during that 60 day period. Following any such hearing requested pursuant to this subsection, the board in its discretion may impose upon that appraiser any sanction permitted by this chapter.

(j) Where an applicant or licensee has been found not in compliance with an order for child support as provided in Code Section 19-6-28.1 or 19-11-9.3, such action is sufficient grounds for refusal of a license or suspension of a license. For purposes of this subsection, the hearing and appeal procedures provided for in such Code sections shall be the only such procedures required under this article.

(k) Where an applicant or licensee has been found to be a borrower in default who is not in satisfactory repayment status as provided in Code Section 20-3-295, such finding is sufficient grounds for refusal of a license or suspension of a license. For purposes of this subsection, the hearing and appeal procedures provided for in Code Section 20-3-295 shall be the only such procedures required under this article.

(l) Where the board has previously sanctioned any applicant for a classification under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," such sanction may in itself be a sufficient ground for refusing the classification. (Code 1981, § 43-39A-14, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1991, p. 94, § 43; Ga. L. 1992, p. 1402, § 1; Ga. L. 1994, p. 881, § 4; Ga. L. 1995, p. 1216, § 2; Ga. L. 1996, p. 453, § 14; Ga. L. 1998, p. 1094, § 11; Ga. L. 2000, p. 1527, § 7; Ga. L. 2003, p. 370, § 3; Ga. L. 2007, p. 483, § 4/SB 114; Ga. L. 2008, p. 324, § 43/SB 455; Ga. L. 2011, p. 752, § 43/HB 142.)

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted "approval, provided that, if such" for "approval; and provided that if such" near the beginning of subparagraph (b)(1.2)(A).

Cross references. — Corporation to maintain certified list of borrowers in default, § 20-3-295.

JUDICIAL DECISIONS

Expert testimony not required. — Because O.C.G.A. §§ 43-39A-14, 43-39A-18, and Ga. Comp. R. & Regs. 539-3-.02 clearly and unambiguously expressed the professional standards governing an appraiser's conduct, expert tes-

timony was not required. *Ga. Real Estate Appraisers Bd. v. Krouse*, 299 Ga. App. 73, 681 S.E.2d 737 (2009), cert. denied, No. S09C1924, 2009 Ga. LEXIS 803 (Ga. 2009).

43-39A-14.1. Requirements for the establishment and maintenance of a real estate appraisal management company.

(a) Each appraisal management company applying to the board for registration shall designate a controlling person who shall be the main contact for all communication between the board and the appraisal management company and who shall also serve as the person upon whom service of process may be made in a proceeding against the appraisal management company.

(b) The controlling person designated pursuant to subsection (a) of this Code section shall:

(1) Have never had a license or certificate to act as an appraiser refused, denied, canceled, surrendered in lieu of a pending revocation, or revoked in any state;

(2) Be of good moral character, as determined by the board; and

(3) Submit to a background investigation, as determined by the board.

(c) Each appraisal management company shall certify to the commission on an annual basis that it:

(1) Includes instructions to appraisers in letters of engagement to decline the assignment in the event the appraiser is not geographically competent or the assignment falls outside the appraiser's scope of practice restrictions;

(2) Has a system in place to verify that the appraiser receiving the assignment holds a license or registration in good standing in the State of Georgia and has not had a license or certificate to act as an appraiser refused, denied, canceled, surrendered in lieu of a pending revocation, or revoked in any state;

(3) Has a system in place to perform an appraisal review on a periodic basis of the work of all appraisers who are performing appraisals for the appraisal management company to validate that the appraisals are being conducted in accordance with the standards for real estate appraisals established by the board;

(4) Has reported to the board the results of any appraisal reviews in which an appraisal is found to be substantially noncompliant with the standards for real estate appraisals established by the board or any state or federal laws pertaining to appraisals; and

(5) Maintains records required to be kept by the board that the board is authorized to inspect.

(d) An appraisal management company doing business in this state shall not:

(1) Knowingly employ any person directly involved in real estate appraisal or appraisal management services who does not hold a license or registration in good standing in the State of Georgia or who has had a license or certificate to act as an appraiser refused, denied, canceled, surrendered in lieu of a pending revocation, or revoked in any state;

(2) Knowingly enter into any independent contractor arrangement, whether in oral, written, or other form, with any person for the performance of real estate appraisal services who does not hold a license or registration in good standing in the State of Georgia or who has had a license or certificate to act as an appraiser refused, denied, canceled, surrendered in lieu of a pending revocation, or revoked in any state;

(3) Knowingly enter into any contract, agreement, or other business relationship directly involved with the performance of real estate appraisal or appraisal management services, whether in oral, written, or any other form, with any entity that employs, has entered into an independent contract arrangement, or has entered into any contract, agreement, or other business relationship, whether in oral, written, or any other form, with any person who does not hold a license or registration in good standing in the State of Georgia or who has had a license or certificate to act as an appraiser refused, denied, canceled, surrendered in lieu of a pending revocation, or revoked in any state;

(4) Request or require an appraiser to modify any aspect of an appraisal report unless the modification provides additional information about the basis for a valuation, corrects objective factual errors in the appraisal report, or provides additional information within the appraisal regarding additional sales provided through an established dispute process;

(5) Require an appraiser to prepare an appraisal if the appraiser, in the appraiser's own independent professional judgment, believes the appraiser does not have the necessary expertise for the assignment or for the specific geographic area and has notified the appraisal management company and declined the assignment;

(6) Require an appraiser to prepare an appraisal under a time frame that the appraiser, in the appraiser's own professional judgment, believes does not afford the appraiser the ability to meet all the relevant legal and professional obligations, and the appraiser has notified the appraisal management company and declined the assignment;

(7) Prohibit or inhibit legal or other allowable communication between the appraiser and a lender, a real estate licensee, or any other person who the appraiser, in the appraiser's own professional judgment, believes possesses information that would be relevant;

(8) Knowingly require an appraiser to take any action that does not comply with any provision of this chapter and the rules and regulations promulgated by the board or any assignment conditions and certifications required by the client for whom an appraisal is being performed;

(9) Make any portion of its fee or the appraiser's fee contingent on a predetermined or favorable outcome including, but not limited to, a loan closing or a specific dollar amount being determined by the appraiser in the appraisal;

(10) Prohibit any appraiser who is part of an appraiser panel from recording the fee that the appraiser was paid by the appraisal management company for the performance of the appraisal within the appraisal report that is submitted by the appraiser to the appraisal management company;

(11) Alter, modify, or otherwise change a completed appraisal report submitted by an appraiser by:

(A) Permanently removing the appraiser's signature or seal; or

(B) Adding information to or removing information from the appraisal report with an intent to change the valuation conclusion; or

(12) Require an appraiser to provide the appraisal management company with the appraiser's digital signature or seal; provided, however, that an appraiser shall not be prohibited from voluntarily providing such appraiser's digital signature or seal to another person.

(e) An appraisal management company shall separately state to the client the fees paid to an appraiser for appraisal services and the fees charged by the appraisal management company for services associated with the management of the appraisal process, including procurement of the appraiser's services.

(f) An appraisal management company shall be held responsible for the actions of its controlling person affiliated with such appraisal management company should such controlling person violate any of the provisions of this chapter or any rules and regulations promulgated by the board or engage in any unfair trade practices.

(g) Whenever the board initiates an investigation as provided for in Code Section 43-39A-22 and the evidence gathered in the investigation reveals an apparent violation by the appraisal management company of

this chapter, of the rules and regulations promulgated by the board, or of any unfair trade practices, including, but not limited to, those listed in this Code section, the board shall file notice of hearing in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Whenever an appraisal management company has been found guilty of a violation of any provision of this chapter or the rules and regulations promulgated by the board, or of any unfair trade practices after such hearing has taken place, the board shall have the power to take any one or more of the following actions:

- (1) Refuse to grant or renew registration to an appraisal management company;
- (2) Suspend or revoke the registration of an appraisal management company;
- (3) Impose a fine not to exceed \$1,000.00 for each violation of this chapter, of the rules and regulations promulgated by the board, or of any unfair trade practices with fines for multiple violations limited to \$5,000.00 in any one disciplinary proceeding or such other amount as parties agree; or
- (4) Take other appropriate disciplinary action as established by the rules and regulations of the board. (Code 1981, § 43-39A-14.1, enacted by Ga. L. 2010, p. 765, § 7/HB 1050.)

Effective date. — This Code section became effective August 31, 2010.

43-39A-15. Hearings in accordance with "Georgia Administrative Procedure Act."

(a) If the board, after an application in proper form has been filed with it, accompanied by the proper fee, shall refuse to issue an appraiser classification to such applicant, the board shall provide an opportunity for a hearing for such applicant in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Unless otherwise agreed to by the board, all such hearings shall be held in the county of domicile of the board.

(b) Any person who has exhausted all administrative remedies available within this chapter and who is aggrieved by a final decision in a contested case is entitled to judicial review in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Notwithstanding any provision of subsection (b) of Code Section 50-13-19 to the contrary, initial judicial review of a final decision of the board shall be available solely in the superior court of the county of domicile of the board. (Code 1981, § 43-39A-15, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1992, p. 1402, § 1; Ga. L. 2000, p. 1527, § 8; Ga. L. 2003, p. 370, § 4.)

43-39A-16. Notification by appraiser of change of address; professional corporations.

(a) If an appraiser changes a residence or place of business address, such appraiser shall notify the board, in writing, within 30 days of such change.

(b) Nothing contained in this chapter shall be deemed to prohibit an appraiser from engaging in the practice of real estate appraisal activity as a professional corporation in accordance with the provisions of Chapter 7 of Title 14, the "Georgia Professional Corporation Act." (Code 1981, § 43-39A-16, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1992, p. 1402, § 1; Ga. L. 1998, p. 196, § 2.)

43-39A-17. Civil actions.

(a) After July 1, 1991, no person engaged in the business of real estate appraisal activity in Georgia or acting in the capacity of an appraiser in Georgia may bring or maintain any action in any court of this state to collect compensation for the performance of real estate appraisal activity for which an appraiser classification is required by this chapter without alleging and proving that such person held a Georgia appraiser classification of the type necessary to perform such appraisal activity at all times during the performance of such services.

(b) The board by and through the commissioner may bring an action for any violation of this chapter. (Code 1981, § 43-39A-17, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1992, p. 1402, § 1.)

43-39A-18. Penalties for violations; unfair trade practices; civil judgments.

(a) In accordance with the hearing procedures established for contested cases by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," whenever an appraiser, a school approval, or an instructor approval has been obtained by false or fraudulent representation; or whenever an appraiser, an approved school, or an approved instructor has been found guilty of a violation of this chapter, or of the rules and regulations promulgated by the board, or of any unfair trade practices, including, but not limited to, those listed in this Code section; the board shall have the power to take any one or more of the following actions:

- (1) Refuse to grant or renew a classification to an applicant;
- (2) Administer a reprimand;
- (3) Suspend any classification or approval for a definite period of time or for an indefinite period of time in connection with any

condition that may be attached to the restoration of the classification or approval;

(4) Revoke any classification or approval;

(5) Revoke any classification issued to an appraiser and simultaneously issue such appraiser a classification with more restricted authority to conduct appraisals;

(6) Impose on an appraiser, applicant, school approval, or instructor approval monetary assessments in an amount necessary to reimburse the board for administrative, investigative, and legal costs and expenses incurred by the board in conducting any proceeding authorized under this chapter or Chapter 13 of Title 50, the "Georgia Administrative Procedure Act";

(7) Impose a fine not to exceed \$1,000.00 for each violation of this chapter or its rules and regulations with fines for multiple violations limited to \$5,000.00 in any one disciplinary proceeding or such other amount as the parties may agree;

(8) Require completion of a course of study in real estate appraisal or instruction; or

(9) Limit or restrict any classification or approval as the board deems necessary for the protection of the public.

(b) Appraisers shall not engage in the following unfair trade practices:

(1) Performing any real estate appraisal activity or specialized services which indicate any preference, limitation, or discrimination based on race, color, religion, sex, disability, familial status, or national origin or an intention to make any such preference, limitation, or discrimination;

(2) An act or omission involving dishonesty, fraud, or misrepresentation with the intent to benefit substantially an appraiser or another person or with the intent to injure substantially another person;

(3) Commission of any act of fraud, misrepresentation, or deceit in the making of an appraisal of real estate for which act a final civil or criminal judgment has been rendered;

(4) Engaging in real estate appraisal activity under an assumed or fictitious name not properly registered in this state;

(5) Paying a finder's fee or a referral fee to a person who is not an appraiser in connection with an appraisal of real estate or real property;

(6) Making a false or misleading statement in that portion of a written appraisal report that deals with professional qualifications or in any testimony concerning professional qualifications;

(7) Violation of the confidential nature of governmental records to which an appraiser gained access through employment or engagement as an appraiser by a governmental agency;

(8) Violation of any of the standards for the development or communication of real estate appraisals as promulgated by the board;

(9) Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;

(10) Negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal;

(11) Accepting an independent appraisal assignment when the employment itself is contingent upon the appraiser's reporting a predetermined estimate, analysis, valuation, or opinion or where the fee to be paid is contingent upon the opinion, conclusions, analysis, or valuation reached or upon the consequences resulting from the appraisal assignment;

(12) Failure to retain for a period of five years the original or a true copy of each appraisal report prepared or signed by the appraiser and all supporting data assembled and formulated by the appraiser in preparing each such appraisal report. The five-year period for retention of records is applicable to each engagement of the services of the appraiser and shall commence upon the date of the delivery of each appraisal report to the client unless, within such five-year period, the appraiser is notified that the appraisal or the appraisal report is involved in litigation, in which event the five-year period for the retention of records shall commence upon the date of the final disposition of such litigation;

(13) Failure upon reasonable request of an appraiser to make all records required to be maintained under the provisions of this chapter available to the board for inspection and copying by the board;

(14) Performing any appraisal beyond the scope of authority granted in the appraiser classification held;

(15) Demonstrating incompetency to act as an appraiser in such a manner as to safeguard the interests of the public or any other conduct, whether of the same or a different character than specified in this subsection, which constitutes dishonest dealing;

(16) Performing or attempting to perform any real estate appraisal activity on property located in another state without first having complied fully with that state's laws regarding real estate appraisal activity;

(17) Providing an oral appraisal report in a federally related transaction;

(18) Utilizing the services of any person in other than a ministerial capacity in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal if such person's appraiser classification is suspended or revoked or if such person does not hold an appraiser classification; or

(19) Performing or attempting to perform any real estate appraisal activity in a federally related transaction without complying with the standards required by the federal financial institutions regulatory agency that regulates the financial transaction for which the appraisal assignment is undertaken.

(c) In a disciplinary proceeding based upon a civil judgment, an appraiser shall be afforded an opportunity to present matters in mitigation and extenuation but may not collaterally attack the civil judgment.

(d) When an appraiser has previously been sanctioned by the board or by any other state's real estate appraiser licensing authority, the board may consider such prior sanction in determining the severity of a new sanction which may be imposed upon a finding that an appraiser has violated any provision of this chapter or any of the rules and regulations of the board. The failure of an appraiser to comply with or to obey a final order of the board may be cause for suspension or revocation of the individual's appraiser classification after opportunity for a hearing. (Code 1981, § 43-39A-18, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1992, p. 1402, § 1; Ga. L. 1994, p. 881, § 5; Ga. L. 1995, p. 1302, § 13; Ga. L. 1996, p. 6, § 43; Ga. L. 1997, p. 405, § 4; Ga. L. 2003, p. 370, § 5.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2003, an en- grossing error of subsection designations was corrected.

JUDICIAL DECISIONS

Unfair trade practices. — Preemptive right of first refusal in a realty sales contract was not illegal under O.C.G.A. § 43-39A-18(b)(11) merely because the contract contained a clause stating that an appraiser selected by both parties would set the property's fair market value in case the parties could not agree on valuation; any such appraiser would be acting as a private arbiter to settle fair market value rather than as an independent appraiser subject to the requirements of the statute. *Stephens v. Trust for*

Pub. Land, 475 F. Supp. 2d 1299 (N.D. Ga. 2007).

Expert testimony not required. — Because O.C.G.A. §§ 43-39A-14, 43-39A-18, and Ga. Comp. R. & Regs. 539-3-.02 clearly and unambiguously expressed the professional standards governing an appraiser's conduct, expert testimony was not required. *Ga. Real Estate Appraisers Bd. v. Krouse*, 299 Ga. App. 73, 681 S.E.2d 737 (2009), cert. denied, No. S09C1924, 2009 Ga. LEXIS 803 (Ga. 2009).

43-39A-18.1. Alternative disciplinary procedures; citations.

(a) It is the intent of the General Assembly to provide the board with a disciplinary tool which is an alternative to the sanctions provided for in subsection (a) of Code Section 43-39A-18. The citation provided for in this Code section shall not be construed as a sanction.

(b) Whenever the evidence gathered in an investigation reveals an apparent violation by an appraiser of this chapter, the rules and regulations promulgated by the board, or a standard of conduct, the board, in its discretion, may (1) initiate the process for the imposition of sanctions, as provided for in subsection (a) of Code Section 43-39A-18 and in accordance with the hearing procedures established for contested cases by Chapter 13 of Title 50, or (2) issue a citation to the appraiser. Such citation, which shall be served personally or by mail, shall give notice to the appraiser of the alleged violation or violations of this chapter, commission rules, or standard or standards of conduct and inform the appraiser of the opportunity to request a contested case hearing to be held in accordance with the procedures established for such hearings by Chapter 13 of Title 50. A citation issued by the board may include an order to complete a course of study in real estate appraisal or instruction or to pay a fine not to exceed \$1,000.00 for each violation of this chapter or its rules and regulations, with fines for multiple violations limited to \$5,000.00 in any one citation, or both. If the appraiser fails to request a hearing within 30 days of the date of service of the citation, the order contained in the citation shall be final. The failure of an appraiser to comply with a final order contained in a citation may be cause for the imposition of a sanction on such person's classification, after notice and opportunity for a hearing.

(c) The board is authorized to promulgate rules and regulations to implement this Code section. Such rules may limit the provisions of this chapter and of its rules and regulations and standards of conduct which may be the basis for the issuance of a citation. (Code 1981, § 43-39A-18.1, enacted by Ga. L. 1999, p. 715, § 3.)

43-39A-19. Use of title or terms denoting appraiser classification; federally related transactions; no issuance of classification to business entity.

(a) No appraiser who holds an appraiser classification may use any title, designation, or abbreviation likely to create the impression that such appraiser holds a different appraiser classification. No appraiser shall describe or refer to any appraisal report or any appraisal or other evaluation of real estate by a term or terms which are likely to create the impression that the appraisal was done by an appraiser with a different appraiser classification than that held by the appraiser performing the appraisal.

(b) If an appraiser does not hold an appraiser classification which permits the performance of a particular appraiser assignment for use in a federally related transaction, the appraiser must include in such appraiser's appraisal report a statement that the appraisal report may not be eligible for use in a federally related transaction.

(c) A term or title denoting an appraiser classification may only be used to refer to individuals who hold such appraiser classification and may not be used following or immediately in connection with the name or signature of a firm, partnership, limited liability company, corporation, or group or in such manner that it might be interpreted as referring to a firm, partnership, limited liability company, corporation, group, or anyone other than an individual holder of the appraiser classification.

(d) No appraiser classification shall be issued under the provisions of this chapter to a corporation, partnership, limited liability company, firm, or group. (Code 1981, § 43-39A-19, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1992, p. 1402, § 1; Ga. L. 1993, p. 123, § 47.)

43-39A-20. Use of appraiser as disinterested third party for rendering unbiased valuation or analysis; "specialized services"; contingent fees.

(a) A client or employer may retain or employ an appraiser to act as a disinterested third party in rendering an unbiased valuation or analysis. A client or employer may also retain or employ an appraiser to provide specialized services to facilitate the client's or employer's objectives. In either case, the appraisal and the appraisal report must comply with the provisions of this chapter.

(b) For the purposes of this chapter, the term "specialized services" as defined in Code Section 43-39A-2 means those appraisal services which do not fall within the definition of independent appraisal assignment. The term "specialized services" may include valuation work and analysis work. Regardless of the intention of the client or employer, if the appraiser would be perceived by third parties or the public as acting as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion, the work is classified as an independent appraisal assignment and not "specialized services."

(c) An appraiser may not accept a fee for an independent appraisal assignment that is contingent upon the appraiser's reporting a predetermined estimate, analysis, valuation, or opinion or is contingent upon the opinion, conclusion, analysis, or valuation reached or upon the consequences resulting from the independent appraisal assignment.

(d) An appraiser who enters into an agreement to perform specialized services may be paid a fixed fee or a fee that is contingent on the results achieved by the specialized services.

(e) If an appraiser enters into an agreement to perform specialized services for a contingent fee, this fact shall be clearly stated in each written and oral report. In each written report, this fact shall be clearly stated in a prominent location in such report, in each letter of transmittal, and in the certification statement made by the appraiser in such report.

(f) Any appraiser who performs specialized services for which any other law requires licensure, certification, or registration must first obtain that licensure, certification, or registration before undertaking any such specialized services. (Code 1981, § 43-39A-20, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1992, p. 1402, § 1.)

JUDICIAL DECISIONS

Cited in *Stephens v. Trust for Pub. Land*, 475 F. Supp. 2d 1299 (N.D. Ga. 2007).

43-39A-21. Hearings on imposition of sanctions against appraisers; judicial review.

(a) Before the board shall impose on any appraiser or appraisal management company any sanction permitted by this chapter, it shall provide an opportunity for a hearing for such appraiser or appraisal management company in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Unless otherwise agreed to by the board, all such hearings shall be held in the county of domicile of the board.

(b) If any appraiser, appraisal management company, or applicant fails to appear at any hearing after reasonable notice, the board may proceed to hear the evidence against such appraiser, appraisal management company, or applicant and take action as if such appraiser, appraisal management company, or applicant had been present. A notice of hearing, initial or proposed decision, or final decision of the board in a disciplinary proceeding shall be served upon the appraiser, appraisal management company, or applicant by personal service or by certified mail or statutory overnight delivery, return receipt requested, to the last known address of record with the board. If such material is returned marked "unclaimed" or "refused" or is undeliverable and if the appraiser, appraisal management company, or applicant cannot, after diligent effort, be located, the real estate commissioner shall be deemed to be the agent for such appraiser, appraisal management company, or applicant for the purposes of this Code section, and service upon the real estate commissioner shall be deemed service upon the appraiser, appraisal management company, or applicant.

(c) Any person who has exhausted all administrative remedies available within this chapter and who is aggrieved by a final decision in a contested case is entitled to judicial review in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Notwithstanding any provision of subsection (b) of Code Section 50-13-19 to the contrary, initial judicial review of a final decision of the board shall be available solely in the superior court of the county of domicile of the board. (Code 1981, § 43-39A-21, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1992, p. 1402, § 1; Ga. L. 2000, p. 1527, § 9; Ga. L. 2000, p. 1589, § 3; Ga. L. 2003, p. 370, § 6; Ga. L. 2010, p. 765, § 8/HB 1050.)

The 2010 amendment, effective August 31, 2010, in subsection (a), twice inserted "or appraisal management company"; and, throughout subsection (b) inserted ", appraisal management company,".

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to subsection (b) is applicable with respect to notices delivered on or after July 1, 2000.

43-39A-22. Investigations; subpoenas; confidentiality; access to records; publication of names of disciplined appraisers and schools; closed meetings.

(a) The board may, upon its own motion, and shall, upon the sworn written request of any person, investigate the actions of any appraiser, applicant, appraisal management company, or school approved by the board; provided, however, that, whenever a request for investigation involves an appraisal report which varies from a sales, lease, or exchange price by 20 percent or less, or, if the appraiser or appraisal management company is acting as a tax consultant, which varies from the tax assessor's value by 20 percent or less, the board may in its discretion decline to conduct an investigation. Except for investigations of applicants for appraiser classifications, investigations of allegations of fraudulent conduct, or investigations of possible violations of this chapter which have been litigated in the courts or arise from litigation in the courts, the board shall not initiate an investigation on its own motion or upon a sworn written request for investigation unless the act or acts which may constitute a violation of this chapter occurred within five years of the initiation of the investigation.

(b) Any person authorized to conduct an investigation on behalf of the board shall have access to and may examine any writings, documents, or other material which may be related to an investigation made upon the order of the board.

(c) In the conduct of an authorized investigation, the chairperson of the board or the commissioner may issue subpoenas to compel production of such writings, documents, or material on behalf of the board.

After the service of a notice of hearing, the commissioner or chairperson of the board may issue subpoenas to compel production of such writings, documents, or material, either on behalf of the board or at the request of a respondent. The board or the respondent may apply to the superior court of the county in which a person disobeying a subpoena resides for an order requiring compliance. Failure to comply with such an order shall be punishable as for contempt of court.

(d) The results of all investigations shall be reported only to the board or to the commissioner and the records of such investigations shall not be subject to subpoena in civil actions. Records of investigations shall be kept by the board and no part of any investigative record shall be released for any purpose other than a hearing before the board or its designated hearing officer, review by another law enforcement agency or lawful licensing authority upon issuance of a subpoena from such agency or authority or at the discretion of the board upon an affirmative vote of a majority of the quorum of the board, review by the appraiser, applicant, or appraisal management company that is the subject of the notice of hearing after its service, review by the board's legal counsel, or an appeal of a decision by the board to a court of competent jurisdiction; provided, however, if an investigation authorized by this chapter results in the board's filing a notice of hearing or entering into settlement discussions with a member of the board, the commissioner shall immediately notify the Governor or the Governor's legal counsel of such action by the board. After service of a notice of hearing, the appraiser, applicant, or appraisal management company that is the subject of the notice of hearing shall have a right to obtain a copy of the investigative record pertaining to the hearing.

(e) Whenever the board revokes or suspends for more than 60 days an appraiser classification or a school approval or whenever an appraiser, appraisal management company, or approved school surrenders an appraiser classification or an approval to the board after the board has filed a notice of hearing, the board shall publish the name of such appraiser, appraisal management company, or approved school in its official newsletter.

(f) The board shall have the authority to exclude all persons during the board's or the staff of the board's:

(1) Deliberations on disciplinary proceedings;

(2) Meetings with an appraiser or an applicant or the legal counsel of that appraiser or applicant in which the appraiser or applicant seeks to settle a contested case as provided in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; and

(3) Review of the results of investigations initiated under this Code section. (Code 1981, § 43-39A-22, enacted by Ga. L. 1990, p.

1701, § 1; Ga. L. 1992, p. 1402, § 1; Ga. L. 2006, p. 792, § 3/SB 547; Ga. L. 2010, p. 765, § 9/HB 1050; Ga. L. 2011, p. 752, § 43/HB 142.)

The 2010 amendment, effective August 31, 2010, in subsection (a), inserted “appraisal management company,” near the beginning, and inserted “or appraisal management company” near the middle; in subsection (d), twice substituted “appraiser, applicant, or appraisal management company” for “appraiser or applicant”; and, in subsection (e), inserted “, appraisal management company,” twice.

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, in subsection (d), substituted “that is the subject” for “who is the subject” in the second and third sentences; and, in subsection (e), substituted “or approved school” for “or an approved school” near the middle.

43-39A-22.1. Conviction data defined; fingerprint records check; disclosure.

(a) As used in this Code section, the term “conviction data” means a record of a finding or verdict of guilty or plea of guilty or plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been brought, or a record of a sentencing to first offender treatment without an adjudication of guilt.

(b) After the board has opened an investigation authorized by Code Section 43-39A-22, the board shall be authorized to obtain conviction data with respect to an applicant or appraiser who is the subject of such investigation. The board may require any applicant or appraiser who is the subject of an investigation conducted pursuant to Code Section 43-39A-22 and who has been convicted of, pled nolo contendere to, or been granted first offender treatment upon being charged with any criminal offense other than a traffic violation or any traffic violation that involved driving under the influence of alcohol or drugs, homicide or feticide by vehicle, fleeing the scene of an accident, attempting to elude a police officer, or impersonating a law enforcement officer to submit to the board two complete sets of classifiable fingerprints of the applicant or appraiser. Upon receipt thereof, the board shall submit both sets of fingerprints to the Georgia Crime Information Center which shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report. The Georgia Crime Information Center shall retain the other set of fingerprints and promptly conduct a search of its own records and records to which it has access. The Georgia Crime Information Center shall notify the board in writing of any derogatory finding, including, but not limited to, any conviction data regarding the fingerprint records check or if there is no such finding. All conviction data received by the board shall be used by it for the exclusive purpose of carrying out its responsibilities under this chapter, shall not be a public record, shall be privileged, and shall not be disclosed to any other

person or agency except as provided in Code Section 43-39A-22. (Code 1981, § 43-39A-22.1, enacted by Ga. L. 2000, p. 1527, § 10.)

43-39A-23. Injunctions.

Whenever, in the judgment of the board, any person has engaged in any acts or practices which constitute or will constitute a violation of this chapter, the Attorney General may maintain an action in the name of the state in the superior court of the county in which such violation occurred to abate and enjoin temporarily or permanently such acts and practices and to enforce compliance with this chapter. The plaintiff shall not be required to give any bond. (Code 1981, § 43-39A-23, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1992, p. 1402, § 1.)

43-39A-24. Unlawful to operate without appraiser classification; exceptions.

(a) Except as provided in this Code section, on and after July 1, 1991, it shall be unlawful for anyone to engage in real estate appraisal activity in this state without first obtaining an appraiser classification as provided in this chapter. Nothing in this chapter shall be construed to prohibit any person who is licensed to practice in this state under any other law from engaging in the practice for which such person is licensed.

(b) This chapter shall not apply to:

(1) Individuals:

(A) Who do not render significant professional assistance in arriving at a real estate appraisal analysis, opinion, or conclusion; or

(B) Who assist an appraiser in the preparation of an appraisal report but do not sign that report or make any representations regarding it to any third party;

(2) A real estate licensee licensed in accordance with Chapter 40 of this title who, in the ordinary course of real estate brokerage business, gives a broker's price opinion, competitive market analysis, or any other written or oral opinion to a potential seller, purchaser, landlord, tenant, or third party as to the recommended listing, lease, rental, or purchase price of real estate or real property; provided, however, that this opinion as to the listing, lease, rental, or purchase price shall not be referred to as an appraisal;

(3) A registered forester registered pursuant to the provisions of Code Section 12-6-40 who appraises or evaluates standing or growing timber located in this state and issues a "certified" appraisal or

valuation on such timber as permitted by Code Section 12-6-40, except that, when an appraisal or valuation of standing or growing timber is to be used in a federally related loan transaction, such registered forester must obtain the proper appraiser classification under this chapter, if required by federal law and the Appraisal Subcommittee;

(4) Any individual, partnership, limited liability company, or corporation which, as owner, as the spouse of an owner, as general partner of a limited partnership, as officer of a corporation, as lessor, or as prospective purchaser or lessee or its regular employees, expresses an opinion of value on real estate or real property leased or to be acquired by such owner;

(5) Any person who testifies to the value of real estate or real property in the courts of this state;

(6) Any officer or employee of a government agency in the conduct of official duties, except when the appraisal is being used by a government agency exercising its power of eminent domain; or

(7) Unless otherwise required by federal law or regulation, a person appraising real estate or real property exclusively for the use of a bank, a savings and loan association, or a credit union.

(c) The exceptions provided by subsection (b) of this Code section shall not apply to any person who holds an appraiser classification. (Code 1981, § 43-39A-24, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1991, p. 266, § 6; Ga. L. 1992, p. 1402, § 1; Ga. L. 1993, p. 123, § 48.)

JUDICIAL DECISIONS

Court testimony of out-of-state appraiser. — On a petition for confirmation of a foreclosure sale, the valuation report and testimony of a Kentucky appraiser should have been allowed into evidence; the words “any person who holds an appraiser classification” in O.C.G.A. § 43-39A-24(c) refer only to a person who holds such a classification issued by the

Georgia Real Estate Appraisers Board and, thus, the exceptions in O.C.G.A. § 43-39A-24(b) do not apply to any person holding a Georgia appraiser classification, but the exceptions do apply to persons holding appraiser classifications from other states. *Leota Properties, Ltd. v. Bank One Lexington*, 212 Ga. App. 508, 441 S.E.2d 920 (1994).

OPINIONS OF THE ATTORNEY GENERAL

Real estate broker's price opinion. — Licensed real estate broker who is not licensed as a real estate appraiser may

provide a real estate broker's price opinion to a lending institution for financing purposes. 1999 Op. Att'y Gen. No. 99-15.

43-39A-25. Certain actions relating to appraisal activity as constituting crimes; cease and desist orders; fine.

(a) Any person who, directly or indirectly, with the intention or upon the promise of receiving any valuable consideration, offers, attempts, or agrees to perform or performs any single act of real estate appraisal activity defined in Code Section 43-39A-2, whether as a part of an appraisal or as an appraisal, shall be deemed an appraiser within the meaning of this chapter. The commission of a single such act by a person who is required to have an appraiser classification under this chapter but who has not obtained such appraiser classification shall constitute a violation of this chapter.

(b) It shall be unlawful for any person, directly or indirectly, to engage in or conduct the business of, or advertise or hold himself or herself out as engaging in or conducting the business of, or act in the capacity of, an appraiser within this state without first obtaining an appraiser classification as provided in this chapter.

(c) Notwithstanding any other provisions of law to the contrary, the board may issue a cease and desist order prohibiting any person from violating the provisions of this chapter by engaging in the practice of an appraiser without proper appraiser classification. Such cease and desist order shall be final ten days after it is issued unless the person to whom such order is issued requests a hearing before the board.

(d) The violation of any cease and desist order of the board issued under subsection (c) of this Code section shall subject the person violating the order to further proceedings before the board, and the board shall be authorized to impose a fine not to exceed \$1,000.00 for each transaction constituting a violation of such order. Each day that a person practices in violation of this chapter shall constitute a separate violation.

(e) Initial judicial review of the decision of the board entered pursuant to this Code section shall be available solely in the superior court of the county of domicile of the board.

(f) Nothing in this Code section shall be construed to prohibit the board from seeking remedies otherwise available by statute without first seeking a cease and desist order in accordance with the provisions of this Code section. (Code 1981, § 43-39A-25, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1992, p. 1402, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, “appraiser” was substituted for “appraisal” preceding the first occurrence of “classification” in the second sentence of subsection (a).

JUDICIAL DECISIONS

Court testimony of out-of-state appraisers. — Individuals from out-of-state who testify as to the value of real estate under O.C.G.A. § 43-39A-24(b)(5) without

a Georgia appraisal classification do not violate O.C.G.A. § 43-39A-25. *Leota Properties, Ltd. v. Bank One Lexington*, 212 Ga. App. 508, 441 S.E.2d 920 (1994).

43-39A-26. Penalty.

Any person acting as an appraiser within the meaning of this chapter without an appraiser classification and any person who violates any other provision of this chapter shall be guilty of a misdemeanor. (Code 1981, § 43-39A-26, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1992, p. 1402, § 1.)

JUDICIAL DECISIONS

Court testimony of out-of-state appraisers. — Individuals from out-of-state who testify as to the value of real estate under O.C.G.A. § 43-39A-24(b)(5) without

a Georgia appraisal classification do not violate O.C.G.A. § 43-39A-26. *Leota Properties, Ltd. v. Bank One Lexington*, 212 Ga. App. 508, 441 S.E.2d 920 (1994).

43-39A-27. Termination.

Repealed by Ga. L. 1992, p. 3137, § 32, effective July 1, 1992.

Editor's notes. — This Code section was based on Ga. L. 1990, p. 1701, § 1 and Ga. L. 1992, p. 1402, § 1.

CHAPTER 40

REAL ESTATE BROKERS AND SALESPERSONS

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43-40-1.	Definitions.		viction; noncompliance with child support order; borrowers in default.
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43-40-3.	Determination of fees by commission.	43-40-17.	Revocation or suspension of license issued to partnership, limited liability company, or corporation [Repealed].
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43-40-6.	(Effective January 1, 2013. See note.) Seal; records.	43-40-22.	Real estate education, research, and recovery fund; revocation of license upon court order for payment from fund; subrogation.
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publication of licensee name upon revocation or suspension; closed meetings.

43-40-27.1. Conviction data.

43-40-28. Injunctive actions.

43-40-29. Exceptions to operation of chapter.

43-40-30. Acting without a license; cease and desist order; judicial review; effect of Code section on other remedies.

43-40-30.1. Employer-employee or broker-

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independent contractor relationships between licensees.

43-40-30.2. Broker's license granted to corporation, partnership, or limited liability company engaged in providing community association management services; qualifications of qualifying broker [Repealed].

43-40-31. Penalty.

43-40-32. Termination [Repealed].

Cross references. — Principal-agent relationship between property owner and broker, § 10-6-32.

Editor's notes. — Ga. L. 1981, p. 1898, which revised the powers and duties of the joint-secretary, did not apply to the Georgia Real Estate Commission; see § 5 of the 1981 Act. See also the editor's notes under Code Sections 43-1-2, 43-1-4, 43-1-7 and 43-1-12.

Administrative rules and regulations. — Substantive regulations, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Real Estate Commission, Chapter 520-1.

Law reviews. — For article, "Checklists for Georgia Real Estate Contracts," see 2 Ga. St. B.J. 343 (1966). For article, "Compensation of the Georgia Real Estate Broker," see 6 Ga. L. Rev. 375 (1972). For article surveying recent legislative and judicial developments in Georgia's real property laws, see 31 Mercer L. Rev. 187 (1979). For article surveying Georgia cases in the area of real property from June 1979 through June 1980, see 32 Mercer L. Rev. 175 (1980).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1925, p. 325, and under former Code 1933, Ch. 84-14, as it read prior to revision by Ga. L. 1973, p. 100, are included in the annotations for this Code section.

State may impose license fee upon occupation without abridging constitutional rights and privileges of others carrying on business in the state, or depriving others of equal protection of laws, or taking others' property without due process of law. *Camp v. State*, 171 Ga. 25, 154 S.E. 436 (1930) (decided under Ga. L. 1925, p. 325).

O.C.G.A. Ch. 40, T. 43 is merely regulatory in nature and does not have the effect of changing the substantive law applicable in a civil action to recover for a real estate agent's alleged misconduct.

Johnson Realty, Inc. v. Hand, 189 Ga. App. 706, 377 S.E.2d 176 (1988).

Chapter sets forth the scope and limit of legislation as to authority of commission to adopt rules and regulations. *O'Neal v. Georgia Real Estate Comm'n*, 129 Ga. App. 211, 199 S.E.2d 362 (1973) (decided under former Code 1933, Ch. 84-14; see O.C.G.A. Ch. 40, T. 43).

Minimum purchase price upheld. — Award of realty firm's minimum purchase price to sellers was proper; the contract unambiguously provided for a \$70,000 minimum purchase price to be paid even if the sellers were no longer entitled to commission overrides because the sellers' relationship with the firm was terminated prior to the end of a three-year period. *Mt. Aire Realty, Inc. v. Birdie White Enters.*, 265 Ga. App. 366, 593 S.E.2d 900 (2004).

Cause of action may be based in

tort by showing conspiracy to deprive real estate broker of commissions due under contract. *Mathews v. Greiner*, 130 Ga. App. 817, 204 S.E.2d 749 (1974) (decided under former Code 1933, Ch. 84-14).

Conditions for recovery of commission for real estate sale. — Petition which seeks to recover commissions for sale of real estate only is fatally defective unless the petition alleges that the plaintiff has complied with the provisions of the law as it pertains to real estate salesmen or brokers. When a petition is grounded upon single contract for sale of real estate and personalty it is good as against a general demurrer (now motion to dismiss). The amount of recovery is a ques-

tion of fact. *Moreland v. Kilgore*, 83 Ga. App. 606, 64 S.E.2d 295 (1951) (decided under former Code 1933, Ch. 84-14).

Compensation in assumpsit on quantum meruit basis is available to realtors. — Court of Appeals erred in holding that compensation claimed in assumpsit on quantum meruit basis was not within contemplation of law pertaining to real estate brokers. *Stokes & Co. v. McCoy*, 212 Ga. 78, 90 S.E.2d 404 (1955) (decided under former Code 1933, Ch. 84-14).

Cited in *Dwyer v. Impeciato*, 134 Ga. App. 147, 213 S.E.2d 529 (1975); *Krizan v. Newman & Co.*, 246 Ga. 214, 271 S.E.2d 135 (1980).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, Ch. 84-14 as it read prior to revision by Ga. L. 1973, p. 100, are included in the annotations for this Code section.

Broker may charge fixed fee and collect part or all of that fee before performance of service. 1977 Op. Att'y Gen. No. 77-79.

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may not sue or be sued except when Attorney General initiates action in interest of state. 1976 Op. Att'y Gen. No. 76-93.

Exempt veteran must pay realtor license fees. — Veteran's certificate of exemption does not exempt either a real estate broker or a general insurance agent from payment of license fees. 1950-51 Op. Att'y Gen. p. 229 (decided under former Code 1933, Ch. 84-14 as it read prior to revision by Ga. L. 1973, p. 100.)

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

Am. Jur. Proof of Facts. — Real Estate Broker's Fraud as to Income from or Earnings of Property, 11 POF2d 623.

Real Estate Broker's Misrepresentation of Condition or Value of Realty, 16 POF2d 719.

Real Estate Broker's Misrepresentation or Nondisclosure as to Condition or Value of Realty, 39 POF3d 309.

Real Estate Purchaser's Recovery of Damages in Tort for Fraudulent Misrepresentation of Quantity of Land Sold, 61 POF3d 411.

Real Estate Seller's Claims for Relief for Fraudulent-Concealment of Identity of True Purchaser of Realty, 63 POF3d 257.

Am. Jur. Trials. — Resolving Real Estate Disputes through Arbitration, 27 Am. Jur. Trials 621.

Resolving Real Estate Brokers' Disputes, 88 Am. Jur. Trials 321.

Prospective Purchaser's Recovery of Damages for Tortious Interference with Real Estate Contract, 97 Am. Jur. Trials 107.

Real Estate Broker's Breach of Fiduciary Duty to Disclose Material Facts to Seller-Principal, 101 Am. Jur. Trials 1.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S.,

Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Broker's right to commission as affected by his advising purchaser against the title, 1 ALR 1636.

Right of real estate broker to commissions where he was unable to procure an offer of the owner's price from one whom he interested, and who subsequently, without his intervention, purchased at that price, 9 ALR 1194.

Duration of real estate broker's contract which specifies no time, 24 ALR 1537; 28 ALR 893.

Right of vendor and purchaser respectively to possession pending performance, but before default, of executory contract for sale of real estate, 28 ALR 1069.

Contract by which real-estate broker is to have all in excess of a stipulated sum, as a wagering contract, 30 ALR 829.

Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

Real estate broker's right to commission as affected by failure or refusal of customer to comply with valid contract, 51 ALR 1390; 74 ALR2d 437.

Who is real estate agent, salesman, or broker within meaning of statute, 56 ALR 480; 167 ALR 774.

Character and extent of liability on real estate broker's statutory bond, 75 ALR 1130.

Right of owner to terminate real estate broker's employment pending negotiations with prospective purchaser, 88 ALR 716.

Right of real estate broker against third person who prevented broker from earning commissions, or who received, or induced owner to pay to him or another, commission which the broker had earned, 97 ALR 1273; 146 ALR 1417.

What amounts to waiver of termination of real estate broker's contract, 140 ALR 1019.

Real-estate broker's right to commissions as affected by owner's ignorance of fact that purchaser had been contacted by broker, 142 ALR 275.

Income tax: deduction, in return on accrual basis, in respect of agents' or salesmen's commissions, 143 ALR 1171.

Broker's right to compensation as affected by the fact that customer procured by him joined with another in the purchase of the property involved, 164 ALR 949.

Rights and obligations of real-estate broker employed to sell property as affected by option to purchase for himself, 164 ALR 1378.

Real estate broker's right to commission on sale, exchange, or lease of property listed without statement of price or other terms, 169 ALR 380.

Real estate broker's right, as against his employer, to commission on sale by sub-agent, 3 ALR2d 532.

Relative rights and liabilities of vendor and his broker to down payment or earnest money forfeited by vendee for default under real estate contract, 9 ALR2d 495.

Payment to broker or agent authorized to sell real property, as payment to principal, 30 ALR2d 805.

Power of real estate broker to execute contract of sale in behalf of principal, 43 ALR2d 1014.

"Exclusive right to sell" and other terms in real estate broker's contract as excluding owner's right of sale, 88 ALR2d 936.

Licensed real estate broker's right to compensation as affected by lack of license on the part of partners, coadventurers, employees, or other associates, 8 ALR3d 523.

Right of real estate broker to commission where listing contract is for sale of property and it is subsequently leased to one with whom broker had negotiated, 42 ALR3d 1430.

Validity, construction, and effect of real estate brokers' multiple-listing agreement, 45 ALR3d 190.

Real estate broker's right to commission for procuring lessee, where lease terminates before contemplated term, 54 ALR3d 1171.

Duty and liability of real estate agent or broker to purchaser with respect to procurement or transfer of insurance policy, 88 ALR3d 1077.

Practices forbidden by state deceptive trade practice and consumer protection acts, 89 ALR3d 449.

Modern view as to right of real estate broker to recover commission from seller-principal where buyer defaults under valid contract of sale, 12 ALR4th 1083.

Right to private action under state statutes or regulations governing real-estate brokers or salesmen, 28 ALR4th 199.

Real-estate broker's right to recover commission from seller where sale fails because of seller's failure to deliver good title — modern cases, 28 ALR4th 1007.

Real-estate broker's rights and liabilities as affected by failure to disclose financial information concerning purchaser, 34 ALR4th 191.

Transactions within public security or guaranty fund designed to compensate

those suffering damage or loss on account of real-estate brokers' defalcations, 38 ALR4th 792.

Real estate broker's liability to purchaser for misrepresentation or nondisclosure of physical defects in property, 46 ALR4th 546.

Real-estate brokers: statute or regulation forbidding use of prizes, gifts, or premiums as inducement to secure customers, 62 ALR4th 1044.

Broker's liability for fraud or misrepresentation concerning development or non-development of nearby property, 71 ALR4th 511.

What constitutes financial ability to perform within rule entitling broker to commission for producing ready, willing, and able purchaser of real property, 87 ALR4th 11.

Liability of vendor or real-estate broker for failure to disclose information concerning off-site conditions affecting value of property, 41 ALR5th 157.

43-40-1. Definitions.

As used in this chapter, the term:

(1) "Associate broker" means a person who acts on behalf of a real estate broker in performing any act authorized by this chapter to be performed by the broker.

(2) "Broker" means any person who, for another, and who, for a fee, commission, or any other valuable consideration or with the intent or expectation of receiving the same from another:

(A) Negotiates or attempts to negotiate, or assists in procuring prospects for the listing, sale, purchase, exchange, renting, lease, or option for any real estate or of the improvements thereon;

(B) Holds himself or herself out as a referral agent for the purpose of securing prospects for the listing, sale, purchase, exchange, renting, lease, or option for any real estate;

(C) Collects rents, assessments, or other trust funds or attempts to collect rents, assessments, or other trust funds;

(D) Is employed by or on behalf of the owner or owners of lots, time-share intervals, or other parcels of real estate at a salary, fee, commission, or any other valuable consideration to sell such real estate or any part thereof in lots or parcels or intervals or other disposition thereof;

(E) Engages in the business of charging an advance fee or contracting for collecting of a fee, other than an advertising fee, in connection with any contract whereby he or she undertakes primarily to promote the sale of real estate either through its listing in a publication issued primarily for such purpose, or for referral of information concerning such real estate to brokers, or both;

(F) Auctions or offers or attempts or agrees to auction real estate;

(G) Buys or offers to buy, sells or offers to sell, or otherwise deals in options to buy real estate;

(H) Performs property management services or community association management services;

(I) Provides or attempts to provide to any party to a real estate transaction consulting services designed to assist the party in the negotiations or procurement of prospects for the listing, sale, purchase, exchange, renting, lease, or option for any real estate or the improvements thereon; or

(J) Advertises or holds himself or herself out as engaged in any of the foregoing.

(2.1) "Brokerage agreement" means an express written contract wherein the client promises to pay the real estate broker a valuable consideration or agrees that the real estate broker may receive a valuable consideration from another in consideration of the broker's producing a seller, buyer, tenant, or landlord ready, able, and willing to sell, buy, or rent the property or in consideration of the broker's performing property management services or performing community association management services.

(3) "Commission" means the Georgia Real Estate Commission.

(4) "Commissioner" means the real estate commissioner.

(4.1) "Community association" means an owner organization of a residential or mixed use common interest realty association in which membership is mandatory as an incident of ownership within the development, such as condominiums, cooperatives, homeowner associations, timeshares, lot division with restrictions in management, and other forms of common interest or planned developments wherein there is a common management.

(4.2) "Community association management services" means the provision, for a valuable consideration, to others of management or administrative services on, in, or to the operation of the affairs of a community association, including, but not limited to, collecting, controlling, or disbursing the funds; obtaining insurance, arranging

for and coordinating maintenance to the association property; and otherwise overseeing the day-to-day operations of the association.

(4.3) "Community association manager" means a person who acts on behalf of a real estate broker in providing only community association management services.

(4.4) "Firm" means any business entity, including, but not limited to, a corporation, partnership, limited liability company, or sole proprietorship.

(5) "Licensee" means any person who is licensed as a community association manager, salesperson, associate broker, or broker.

(5.1) "Ministerial acts" means those acts related to real estate brokerage activities which a licensee or a licensee's employee performs and which do not require discretion or the exercise of the licensee's own judgment.

(6) "Person" means individuals and firms.

(7) "Property management services" means the provision, for a valuable consideration, to another of marketing, including referring prospective tenants; leasing; physical, administrative, or financial maintenance; and overall management of real property; or supervision of the foregoing activities for another pursuant to a property management agreement.

(8) "Purchaser" means a person who acquired or attempts to acquire or succeeds to an interest in land.

(9) "Real estate" means condominiums and leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold or nonfreehold and whether the real estate is situated in this state or elsewhere; and shall also include a mobile home when such mobile home is affixed to land. "Mobile home," as used in this paragraph, means any factory-built structure or structures equipped with the necessary service connections and made so as to be readily movable as a unit or units and designed to be used as a dwelling unit or units.

(10) "Salesperson" means any person, other than an associate broker, who acts on behalf of a real estate broker in performing any act authorized by this chapter to be performed by the broker.

(11) "State" means any state, district, territory, possession, or province of the United States or Canada and any sovereign nation or any political subdivision of such sovereign nation. (Ga. L. 1925, p. 325, § 2; Ga. L. 1927, p. 307, §§ 21, 22; Ga. L. 1929, p. 316, § 29; Code 1933, § 84-1402; Ga. L. 1965, p. 629, § 2; Code 1933, § 84-1401, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 1974, p. 379,

§ 1; Ga. L. 1980, p. 1398, § 1; Ga. L. 1985, p. 360, § 1; Ga. L. 1990, p. 650, § 1; Ga. L. 1993, p. 123, § 49; Ga. L. 1995, p. 1216, § 3; Ga. L. 1996, p. 194, § 3; Ga. L. 2000, p. 1527, § 11; Ga. L. 2003, p. 370, § 7.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 1888 and Ga. L. 1925, p. 325; and former Code 1933, § 84-1402, as it read prior to revision of chapter by Ga. L. 1973, p. 100, are included in the annotations for this Code section.

Legislative intent to require license of persons securing realty buyers. — By enacting Ga. L. 1973, p. 100, § 1 (see O.C.G.A. §§ 43-40-1, 43-40-29 and 43-40-30), the legislature intended to require a person to obtain a license before procuring real property purchasers in return for compensation. *Berchenko v. Fulton Fed. Sav. & Loan Ass'n*, 149 Ga. App. 526, 254 S.E.2d 745, *aff'd*, 244 Ga. 733, 261 S.E.2d 643 (1979).

Definition of "broker" who needs license for real estate sales. — This section defined a real estate "broker" to include any person who, for a fee, assisted in procuring prospects for sale or purchase of real estate. *Krizan v. Newman & Co.*, 246 Ga. 214, 271 S.E.2d 135 (1980) (see O.C.G.A. § 43-40-1).

"Broker" includes person receiving compensation for referral. — Those who merely refer one person to another are exempted from licensure requirement; however, if a fee, commission, or other valuable consideration is promised or intended to be paid for the referral service, by definition, the referral agent is a broker and must be licensed. *Berchenko v. Fulton Fed. Sav. & Loan Ass'n*, 244 Ga. 733, 261 S.E.2d 643 (1979).

This section applied to one who deals "for another." *Barnes v. Didschuneit*, 94 Ga. App. 661, 96 S.E.2d 216 (1956) (see O.C.G.A. § 43-40-1).

There is no legal requirement that a real estate broker or salesperson also be a member of a board of realtors. *Nixon v. Gwinnett County Bd. of Realtors, Inc.*, 249 Ga. 862, 295 S.E.2d 78 (1982).

Real estate includes leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold. *Killingsworth v. French & Whitten Realtors*, 148 Ga. App. 29, 251 S.E.2d 40 (1978).

License is necessary to sell leaseholds, however defined. — At common law, an estate for years included right of occupancy of land of another for no matter how limited a period, whereas rule in this state now is that a lease of under five years will be presumed not to convey an estate for years unless a contrary intent appears. But all leaseholds will be presumed to be "real estate" under definition of subject matter which real estate brokers must be licensed in order to sell. *Killingsworth v. French & Whitten Realtors*, 148 Ga. App. 29, 251 S.E.2d 40 (1978).

Real estate work without license is unlawful. — Ga. L. 1973, p. 100, § 1 (see O.C.G.A. § 43-40-30) provides that any person who performs any single act, as defined in Ga. L. 1973, p. 100, § 1 (see O.C.G.A. § 43-40-1), without being licensed shall be in violation of the law. *Krizan v. Newman & Co.*, 246 Ga. 214, 271 S.E.2d 135 (1980).

Because Georgia's statutory scheme regulating brokers was enacted pursuant to its police power to protect the public interest, an agreement to pay a brokerage fee, entered into with an unlicensed broker, is void and unenforceable. *Amend v. 485 Props., LLC*, 401 F.3d 1255 (11th Cir. 2005).

Chapter does not create a legal cause of action, but conduct condemned may serve as basis for judicial action under other statutes by recognizing certain minimum standards for persons engaged in the real estate business. *Kimball Bridge Rd. v. Everest Realty Corp.*, 141 Ga. App. 835, 234 S.E.2d 673 (1977) (see O.C.G.A. Ch. 40, T. 43).

Acquisition fee held not brokerage commission. — Contractual “acquisition fee” paid in connection with the construction and sale of an apartment complex was not a “brokerage commission,” when the fee was for the purpose of a pass-through on the balance sheet of the transaction. *Piedmont Eng’g & Constr. Corp. v. Balcor Partners-84 II, Inc.*, 196 Ga. App. 486, 396 S.E.2d 279 (1990), cert. denied, 196 Ga. App. 909, 396 S.E.2d 279 (1990).

Exempt disabled veteran still must pay realtor license tax. — Provisions of former Code 1910 and Ga. L. 1925, p. 325 (see O.C.G.A. Ch. 40, T. 43) did not apply to state license taxes, and disabled veteran’s exemption does not authorize carrying on of business of real estate broker, without complying with regulatory measures, and obtaining a license. *Dixon v. Brooke*, 44 Ga. App. 608, 162 S.E. 287 (1932) (decided under former Code 1910, § 1888; and Ga. L. 1925, p. 325).

Realtor must allege license in suit for commission. — Action brought by real estate broker to recover damages for breach of alleged contract for commissions is subject to general demurrer (now motion to dismiss) when the action fails to allege that the broker has fully complied with license laws, whether the point was argued and considered in the trial court or not. *Cline v. Crane*, 90 Ga. App. 192, 82 S.E.2d 175 (1954).

Unlicensed agent not entitled to quantum meruit. — When a former employee alleged that the employee was entitled to quantum meruit against the

former employer for having found a buyer for the employer’s property, for which the employer had orally indicated that the employer would reward the employee, but the employee failed to raise in the trial court that the employee was a referral agent who was exempt from the real estate licensing statutes pursuant to O.C.G.A. § 43-40-29(a)(9), the issue was not reviewable on appeal; thus, summary judgment under O.C.G.A. § 9-11-56(c) was granted to the employer as the employee was not licensed under O.C.G.A. §§ 43-40-1(2)(A) and 43-40-30(a). The true nature of the exchange was a sale of real estate and an agreement was prohibited by the licensing statutes; accordingly, it could not be the basis of a quantum meruit claim. *Everett v. Goodloe*, 268 Ga. App. 536, 602 S.E.2d 284 (2004).

Real estate brokers and salespersons are “professionals” within the intent of O.C.G.A. § 9-11-9 (pleading special matters), requiring affidavits to accompany a charge of professional malpractice. *Allen v. Remax N. Atlanta, Inc.*, 213 Ga. App. 644, 445 S.E.2d 774 (1994).

Cited in *Pendley v. Jessee*, 134 Ga. App. 138, 213 S.E.2d 496 (1975); *Keenan Co. v. Pamlico, Inc.*, 152 Ga. App. 502, 263 S.E.2d 197 (1979); *Northside Realty Assocs. v. MPI Corp.*, 245 Ga. 321, 265 S.E.2d 11 (1980); *Krizan v. Newman & Co.*, 153 Ga. App. 337, 265 S.E.2d 68 (1980); *Wanamaker v. Esther Wynne Realty Assocs.*, 163 Ga. App. 338, 294 S.E.2d 581 (1982); *Unifund Gen., Inc. v. Orr*, 191 Ga. App. 836, 383 S.E.2d 199 (1989); *Roberts v. Coldwell Banker Kinard Realty*, 286 Ga. App. 7, 648 S.E.2d 442 (2007).

OPINIONS OF THE ATTORNEY GENERAL

Editor’s notes. — Some of the following annotations are taken from opinions under former Code 1933, § 84-1402, as it read prior to revision of chapter by Ga. L. 1973, p. 100, which are included in the annotations for this Code section in light of the similarity of the statutory provisions.

Employees of property management companies who negotiate agreements must be licensed. 1977 Op. Att’y Gen. No. 77-26.

Broker’s sale of own realty through

brokerage company may employ only licensed salespersons. — If broker sells personal real estate through the broker’s brokerage company, or otherwise represents to prospective purchasers that the purchasers are dealing with a licensed broker, the broker may employ only licensed salespersons to make such sales on the broker’s behalf. 1977 Op. Att’y Gen. No. 77-26.

Person finding buyer for free but charging loan fee needs no license. — Person charging a fee and obtaining a loan

on real estate does not fall within the statutory definition of a real estate broker or real estate salesman; therefore, such person is not required to be licensed. 1950-51 Op. Att'y Gen. p. 149.

Person who procures a purchaser for real estate, but who does not accept any compensation therefor, does not violate law requiring all real estate dealers to first procure a license, notwithstanding fact that such person does charge a fee for services in procuring a loan incident to purchase of such property. 1952-53 Op. Att'y Gen. p. 410.

Mortgage brokerage firm, acting as "finder," and placing and forwarding loans, does not fall under the statute as to such activities, notwithstanding that such firm may be owned by licensed real estate brokers and would be subject to such law with respect to activities governed thereby. 1970 Op. Att'y Gen. No. U70-131.

Placing advertisement for sale of real estate. — Mere running of advertisement offering for sale real estate not owned by advertiser does not violate prohibition against holding oneself out as a dealer without a license. 1948-49 Op. Att'y Gen. p. 636.

Firm dealing in realty and using word "realty" in name need not necessarily be licensed. — An individual, firm, or corporation may use the name "realty" and may actually deal in real estate without obtaining a license from the Georgia Real Estate Commission; provided, however, such person, firm, or corporation does not for another and for a fee, commission, or other valuable consideration, sell, exchange, buy, rent, or offer or attempt to negotiate a sale, exchange,

purchase, or rental of any estate or interest in real estate or collect or offer or attempt to collect rent for use of real estate. 1950-51 Op. Att'y Gen. p. 150.

Realty business operators must be brokers, even if not participating in transactions. — Properly construed, persons operating a business for purpose of obtaining rental units for clients are required to register as real estate brokers, notwithstanding fact that such persons do not themselves participate in actual negotiation of lease contract. 1952-53 Op. Att'y Gen. p. 165.

Management firm for cooperative must be licensed. — Corporation which is performing administrative and management services for a cooperative, which include collection of monthly rental payments, and occasional involvement in sale or transfer of membership unit from dwelling member to new member must secure a license as a real estate broker. 1970 Op. Att'y Gen. No. U70-14.

Employee who shows houses for commissions must be licensed. — Person employed by another for purpose of showing property for sale or rent and who receives a fee, commission, or other valuable consideration for services, and who performs such services without first obtaining a license from the Georgia Real Estate Commission acts in violation of this section. 1950-51 Op. Att'y Gen. p. 149 (see O.C.G.A. § 43-40-1).

Cemetery corporation selling rights of interment in cemeteries is required to have a license issued to the corporation by the Georgia Real Estate Commission. 1952-53 Op. Att'y Gen. p. 409.

RESEARCH REFERENCES

Am. Jur. 2d. — 12 Am. Jur. 2d, Brokers, § 8 et seq.

C.J.S. — 12 C.J.S., Brokers, § 1 et seq.

ALR. — Necessity and sufficiency of consideration for modification of real estate broker's contract, 42 ALR 987.

Implied contract of employment of real estate broker to procure customer, 49 ALR 933.

Who is real estate agent, salesman, or broker within meaning of statute, 56 ALR 480; 167 ALR 774.

Validity and construction of license tax or fee, or business privilege, or occupational tax, on persons renting or leasing out real estate, 93 ALR2d 1136.

43-40-2. Creation of commission; members; meetings; recusal for conflict of interest; removal; compensation; annual report; budget unit.

(a) There is created the Georgia Real Estate Commission, which shall be composed of six members, each of whom shall be appointed by the Governor and confirmed by the Senate for a term of five years. Any such appointments made when the Senate is not in session shall be effective until acted upon by the Senate. Five of the members shall be licensees who shall have been residents of this state and actively engaged in the real estate business for five years. The sixth member of the commission shall have no connection with the real estate industry whatsoever but shall have a recognized interest in consumer affairs and in consumer protection concerns.

(b) Members of the commission shall serve until their successors are appointed and qualified. Vacancies on the commission shall be filled by appointment of a successor for the unexpired term of office by the Governor. Four members shall constitute a quorum for the transaction of any business of the commission. The commission shall organize by selecting from its members a chairperson and may do all things necessary and convenient to carry this chapter into effect. The commission shall meet at least once a month, or as often as is necessary, and remain in session as long as the chairperson thereof shall deem it necessary to give full consideration to the business before the commission. Members of the commission or others may be designated by the chairperson of the commission, in a spirit of cooperation and coordination, to confer with similar commissions of other states, attend interstate meetings, and generally do such acts and things as may seem advisable to the commission in the advancement of the profession and the standards of the real estate business.

(c) A member of the commission shall recuse himself or herself from voting on matters in which the member has a conflict of interest. Whenever an investigation authorized by this chapter results in the commission's initiating a contested case under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," against a member, such member shall be recused from voting on such matter and may not discuss such matter with other commission members or be present when the commission discusses or votes on such matter.

(d) The Governor, after giving notice and an opportunity for a hearing, may remove from office any member of the commission for any of the following:

- (1) Inability to perform or neglecting to perform the duties required of members;
- (2) Incompetence;

(3) Dishonest conduct; or

(4) Having a disciplinary sanction, other than a citation authorized by this chapter, imposed by any professional licensing agency on such member's right to practice a trade or profession.

(e) The commission is authorized to pass rules and regulations, not inconsistent with this chapter, relating to the professional conduct of licensees and the administration of this chapter.

(f) Each member of the commission shall receive as compensation for each day actually spent on his or her official duties at scheduled meetings and time actually required in traveling to and from its meetings, not to exceed one day's traveling time, the sum of \$25.00 and his or her actual and necessary expenses incurred in the performance of his or her official duties.

(g) The commission, through its chairperson, shall file a written report with the Governor and a copy thereof with both houses of the General Assembly on or before the second Tuesday in January of each year. The Governor may request a preliminary report prior to such an annual report. The report shall include a summary of all actions taken by the commission, a financial report of income and disbursements, staff personnel, and number of persons licensed by the commission. The report shall further delineate steps taken in education and research to disseminate information so that all licensees can be better informed in order to protect the public. The commission shall also outline a program of education and research for each ensuing year, for which a line appropriation shall be requested.

(h) The commission shall be a budget unit as defined in Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act"; provided, however, that the commission shall be assigned for administrative purposes only to the office of the Secretary of State. (Ga. L. 1925, p. 325, §§ 3, 17; Ga. L. 1929, p. 316, § 31; Code 1933, § 84-1404; Ga. L. 1941, p. 342, § 1; Ga. L. 1949, p. 943, § 1; Ga. L. 1968, p. 277, § 1; Ga. L. 1972, p. 1083, § 1; Code 1933, § 84-1405, enacted by Ga. L. 1973, p. 100, § 1; Code 1933, § 84-1426, enacted by Ga. L. 1977, p. 880, § 5; Ga. L. 1978, p. 953, § 1; Ga. L. 1981, p. 1311, § 1; Ga. L. 1985, p. 360, § 2; Ga. L. 2000, p. 1706, § 17; Ga. L. 2006, p. 792, § 4/SB 547.)

Cross references. — Cooperation between Georgia and other states generally, T. 28, C. 6.

Administrative rules and regulations. — Rules of the profession, Official

Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Real Estate Commission, Chapter 520-1 et seq.

JUDICIAL DECISIONS

Commission's rule-making power applies to approving real estate courses. — Rule-making power of Real Estate Commission is to pass rules and regulations relating to administration of (but not inconsistent with) the Commission's approval of courses of study of real

estate. *Georgia Real Estate Comm'n v. Accelerated Courses in Real Estate, Inc.*, 234 Ga. 30, 214 S.E.2d 495 (1975).

Cited in *Georgia Real Estate Comm'n v. Warren*, 152 Ga. App. 283, 262 S.E.2d 570 (1979).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, Ch. 84-14 are included in the annotations for this Code section.

Commission may investigate licensees although such investigation may result in a contested case to be both heard and judged by commission. 1972 Op. Att'y Gen. No. U72-1 (decided under former

Code 1933, Ch. 84-14, as it read prior to revision by Ga. L. 1973, p. 100).

Compensation for out-of-state meetings. — More than one commission member, when designated by commission, may be compensated for attending interstate meetings. 1945-47 Op. Att'y Gen. p. 513 (decided under former Code 1933, Ch. 84-14, as it read prior to revision by Ga. L. 1973, p. 100).

RESEARCH REFERENCES

Am. Jur. 2d. — 12 Am. Jur. 2d, *Brokers*, § 8 et seq.

43-40-3. Determination of fees by commission.

The commission is authorized to establish the amount of any fee which it is authorized by this chapter to charge and collect. Each fee so established shall be reasonable and shall be determined in such a manner that the total amount of fees charged and collected by the commission shall approximate the total of the direct and indirect costs to the state of the operations of the commission. (Ga. L. 1978, p. 1517, § 1.)

43-40-3.1. Rules and regulations.

Notwithstanding any provision of law to the contrary, with respect to any form or application required to be completed by an applicant or a licensee, or with respect to any document required to be issued by the commission, the commission is authorized to promulgate rules and regulations setting forth:

(1) Any procedure that will reduce the use of paper forms, applications, or documents;

(2) Any procedure that will reduce the necessity for the commission to maintain paper documents;

(3) The procedure for submitting or issuing any such form, application, or document by facsimile or electronic means; and

(4) The procedure for satisfying any signature requirement on any such form by electronic signature, voice signature, or other means so long as appropriate security measures are implemented that assure security and verification of any required signature.

As used in this Code section, the term "electronic signature" shall have the same meaning as provided in Code Section 10-12-2. (Code 1981, § 43-40-3.1, enacted by Ga. L. 1999, p. 715, § 4; Ga. L. 2009, p. 698, § 6/HB 126.)

The 2009 amendment, effective July 1, 2009, substituted "Code Section 10-12-2" for "Code Section 10-12-3" at the end of the ending undesignated paragraph.

43-40-4. Office of commissioner; qualifications; restrictions; staff; oath; duties and powers; reimbursement.

(a) There is established within the commission the office of real estate commissioner.

(b) The commissioner shall be a full-time employee of the commission and shall serve as the chief executive officer of the commission. The commission shall in its discretion appoint the commissioner and fix his annual salary. Any person, in order to qualify for appointment to the office of commissioner, shall be a person of good moral character and shall possess such qualifications as the commission may require. The commissioner shall hold no interest in any real estate business or related business while serving as commissioner. The commissioner, with the approval of the commission, may employ and fix the compensation of a secretary, investigators, and other staff to assist him in his duties. Such employees shall not be placed in the classified service of the State Personnel Administration, provided that nothing in this chapter shall be construed to affect any employee in the classified service of the State Personnel Administration as of July 1, 1981.

(c) The commissioner shall take an oath to discharge faithfully the duties of his office.

(d) The commissioner shall be charged with the duties and powers as delegated by the commission.

(e) The commissioner shall be allowed reimbursement for travel and other expenses necessarily incurred in the performance of his duties, the same as other state officers and employees, and shall receive payment of the same in the manner provided for members of the commission. (Code 1933, § 84-1405, enacted by Ga. L. 1973, p. 100, § 1;

Ga. L. 1979, p. 1203, § 1; Ga. L. 1981, p. 1311, § 2; Ga. L. 1994, p. 97, § 43; Ga. L. 2009, p. 745, § 1/SB 97.)

The 2009 amendment, effective July 1, 2009, substituted "State Personnel Administration" for "state merit system" twice in the last sentence of subsection (b).

Cross references. — Reimbursement of expenses for state officers and employees, § 45-7-20 et seq.

JUDICIAL DECISIONS

Cited in Georgia Real Estate Comm'n v. Accelerated Courses in Real Estate, Inc., 234 Ga. 30, 214 S.E.2d 495 (1975); Geor-

gia Real Estate Comm'n v. Warren, 152 Ga. App. 283, 262 S.E.2d 570 (1979).

OPINIONS OF THE ATTORNEY GENERAL

General Assembly intended that commission should have complete discretion in personnel matters involving the commission's employees. It is also apparent that the General Assembly did want to provide continuing Merit System protection to those incumbents in classified positions for as long as the incumbents remain in the incumbents' current positions. 1981 Op. Att'y Gen. No. 81-47.

Employees and positions of commission that are in classified service as of July 1, 1981, shall remain in classified service for as long as the incumbent remains in that position; all other positions and any position that is vacated in the future shall be in the unclassified service. 1981 Op. Att'y Gen. No. 81-47.

Any employee of commission who is in classified service of State Merit

System as of July 1, 1981, shall remain in classified service for as long as the employee remains in the employee's current position. If the employee leaves that position to accept another position with commission, that employee will be in the same situation as any other classified employee who seeks an unclassified position. 1981 Op. Att'y Gen. No. 81-47.

Compensation for out-of-state meetings. — More than one commission member, when designated by the commission, may be compensated for attending interstate meetings. 1945-47 Op. Att'y Gen. p. 513.

Commission may investigate licensees although such investigation may result in a contested case to be both heard and judged by the commission. 1972 Op. Att'y Gen. No. U72-1.

43-40-5. Status of license of commissioner and commission employees.

The real estate license of the real estate commissioner and all other employees of the commission who are licensed by the commission shall be on inactive status during the time of their employment with the commission. The commissioner or such employees will not be required to pay a fee to keep their licenses on an inactive status. Such license shall be taken off the inactive status and returned to the commissioner or employee when his employment is terminated. (Ga. L. 1978, p. 231, § 5.)

JUDICIAL DECISIONS

Cited in Georgia Real Estate Comm'n v. Warren, 152 Ga. App. 283, 262 S.E.2d 570 (1979).

43-40-6. (Effective until January 1, 2013. See note.) Seal; records.

(a) The commission shall adopt a seal, which may be either an engraved or ink stamp seal, with the words "State Real Estate Commission, State of Georgia," and such other device as the commission may desire included thereon, by which it shall authenticate the acts of the commission. Copies of all records and papers in the office of the commission, certified by the signature of the real estate commissioner or the commissioner's designee and the seal of the commission, shall be received in evidence in all cases equally and with like effect as the originals.

(b) The commission shall maintain records so that it may certify the license history of licensees for a period of up to five years preceding the date of certification. The commission may certify the license history of a licensee based on electronic data that it maintains. When that electronic data is derived from a paper record, upon converting the information on the paper record to electronic form and after verification of the electronic record, the commission may:

(1) Destroy the paper record; or

(2) Retain the paper record for a period of time determined by the commission. (Ga. L. 1925, p. 325, § 5; Code 1933, § 84-1406, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 1989, p. 1619, § 1; Ga. L. 1994, p. 1168, § 1; Ga. L. 1999, p. 715, § 5.)

Editor's notes. — Code Section 43-40-6 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

Law reviews. — For note on the 1994 amendment of this Code section, see 11 Georgia St. U.L. Rev. 240 (1994).

43-40-6. (Effective January 1, 2013. See note.) Seal; records.

(a) The commission shall adopt a seal, which may be either an engraved or ink stamp seal, with the words "State Real Estate Commission, State of Georgia," and such other device as the commission may desire included thereon, by which it shall authenticate the acts of the commission.

(b) The commission shall maintain records so that it may certify the license history of licensees for a period of up to five years preceding the

date of certification. The commission may certify the license history of a licensee based on electronic data that it maintains. When that electronic data is derived from a paper record, upon converting the information on the paper record to electronic form and after verification of the electronic record, the commission may:

(1) Destroy the paper record; or

(2) Retain the paper record for a period of time determined by the commission. (Ga. L. 1925, p. 325, § 5; Code 1933, § 84-1406, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 1989, p. 1619, § 1; Ga. L. 1994, p. 1168, § 1; Ga. L. 1999, p. 715, § 5; Ga. L. 2011, p. 99, § 75/HB 24.)

The 2011 amendment, effective January 1, 2013, deleted the former second sentence of subsection (a), which read: "Copies of all records and papers in the office of the commission, certified by the signature of the real estate commissioner or the commissioner's designee and the seal of the commission, shall be received in evidence in all cases equally and with like effect as the originals." See editor's note for applicability.

Editor's notes. — Code Section 43-40-6 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

Ga. L. 2011, p. 99, § 101, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

43-40-7. Application for licenses; confidentiality.

(a) Any person desiring to act as a real estate licensee must file an application for a license with the commission. All original and subsequent applications filed with the commission shall be in such form and detail as the commission shall prescribe, setting forth the following:

(1) The name and address of the applicant or the name under which he or she intends to conduct business and, if the applicant is a partnership or limited liability company, the name and residence address of each member thereof and the name under which the partnership or limited liability company business is to be conducted and, if the applicant is a corporation, the name and address of each of its principal officers;

(2) The place or places, including the city with the street and street number, if any, where the business is to be conducted; and

(3) Such other information as the commission shall require.

(b) Notwithstanding any provision of Article 4 of Chapter 18 of Title 50 to the contrary, all applications, including supporting documents and other personal information submitted by applicants and licensees as part of an application filed with the commission, shall be confidential. The commission shall deem as public records the following information and shall make such information reasonably available for inspection by

the general public: a licensee's name, license number and status, business name, business address, business telephone number, type of license held, and term of license; the fact that a licensee has or has not received a disciplinary sanction; and such other information pertaining to the license of a licensee or approval of a school, course, or instructor as the commission may determine by rule. (Ga. L. 1925, p. 325, § 7; Code 1933, § 84-1410; Code 1933, § 84-1409, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 1993, p. 123, § 50; Ga. L. 2000, p. 1527, § 12.)

JUDICIAL DECISIONS

License issued in trade name. — Real estate brokerage license was not invalid because the license was issued in a trade name rather than in proper corporate name. *Barker v. Century 21-Atlanta E. Realty, Inc.*, 162 Ga. App. 828, 293 S.E.2d 76 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Brokers, but not sales people, may incorporate. — Former Code 1933, § 84-1410 (see O.C.G.A. § 43-40-7) contemplated that real estate brokers may practice in the corporate form, but this power was not extended to sales people by Ga. L. 1970, p. 243, § 2 (see O.C.G.A. § 14-7-2). 1971 Op. Att'y Gen. No. U71-39.

RESEARCH REFERENCES

ALR. — Duty of real estate broker to disclose that prospective purchaser is a relative, 26 ALR2d 1307.

Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

Suspension or revocation of real estate broker's license on ground of discrimination, 42 ALR3d 1099.

Revocation or suspension of real estate broker's license for violation of statutes or regulations prohibiting use of unlicensed personnel in carrying out duties, 68 ALR3d 530.

Necessity of having real estate broker's license in order to recover commission as affected by fact that business sold includes real property, 82 ALR3d 1139.

43-40-8. Qualifications of licensees; course of study for licensed salespersons; lapse; reinstatement; renewal; continuing education; standards for courses.

(a) In order to qualify to become an applicant for a community association manager's license, an individual shall:

(1) Have attained the age of 18 years;

(2) Be a resident of the State of Georgia, unless that person has fully complied with the provisions of Code Section 43-40-9;

(3) Be a high school graduate or the holder of a certificate of equivalency;

(3.1) Have complied fully with the requirements of subsection (b) of Code Section 43-40-15 regarding any criminal convictions;

(4) Furnish evidence of completion of at least 25 instructional hours in a community association manager's course of study approved by the commission; and

(5) Stand and pass a real estate examination administered by or approved by the commission covering generally the matters confronting real estate brokers who provide community association management services and community association managers after completing the requirements of paragraph (4) of this subsection.

Failure to meet any of these requirements shall be grounds for denial of license without a hearing.

(b) In order to qualify to become an applicant for a salesperson's license, an individual shall:

(1) Have attained the age of 18 years;

(2) Be a resident of the State of Georgia, unless that person has fully complied with the provisions of Code Section 43-40-9;

(3) Be a high school graduate or the holder of a certificate of equivalency;

(3.1) Have complied fully with the requirements of subsection (b) of Code Section 43-40-15 regarding any criminal convictions;

(4) Furnish evidence of completion of at least 75 instructional hours in a salesperson's course of study approved by the commission; and

(5) Stand and pass a real estate examination administered by or approved by the commission covering generally the matters confronting real estate brokers and salespersons after completing the requirements of paragraph (4) of this subsection.

Failure to meet any of these requirements shall be grounds for denial of license without a hearing.

(c) In order to qualify to become an applicant for a broker or associate broker's license, an individual shall:

(1) Have attained the age of 21 years;

(2) Be a resident of the State of Georgia, unless that person has fully complied with the provisions of Code Section 43-40-9;

(3) Be a high school graduate or the holder of a certificate of equivalency;

(3.1) Have complied fully with the requirements of subsection (b) of Code Section 43-40-15 regarding any criminal convictions;

(4) Have maintained a license in active status for at least three of the five years immediately preceding the filing of an application to become a broker;

(5) Furnish evidence of completion of 60 instructional hours in a broker's course of study approved by the commission, provided that if licensed as a community association manager, the applicant shall furnish evidence of completion of an additional 75 instructional hours in courses or a course of study approved by the commission; and

(6) Stand and pass a real estate examination administered by or approved by the commission covering generally the matters confronting real estate brokers after completing the requirements of paragraph (5) of this subsection and after serving at least two years of active licensure.

Failure to meet any of these requirements shall be grounds for denial of license without a hearing.

(d) Upon being issued an original salesperson's license, each salesperson shall be required to furnish the commission, within one year of the issuance of a license, evidence of satisfactory completion of a course of study of at least 25 instructional hours approved by the commission. As a condition of satisfactory completion of this course, the licensee shall stand and pass an examination that the commission approves and that covers the subject matter contained in the course. The license of any salesperson who fails to complete satisfactorily in a timely manner the course provided for in this subsection shall lapse, and the salesperson's wall certificate of licensure and pocket card shall immediately be surrendered to the commission. Any salesperson whose license lapses for failure to complete satisfactorily an approved 25 instructional hour course may reinstate the license in the following manner:

(1) Any salesperson who has enrolled in any approved 25 instructional hour course within one year of the issuance of an original license, has paid all required fees for the course, and has not completed all in-class sessions, required exercises, or examinations for any reason may reinstate the license by completing the course within six months of the lapsing of the license; or

(2) Any salesperson who fails to reinstate a lapsed license as provided in paragraph (1) of this subsection shall complete 25 instructional hours in a course of study approved by the commission and pay such penalty fees as the commission may require through its rules and regulations before making application to reinstate such license.

(e) Except those individuals actively licensed on January 1, 1980, each applicant for renewal of an active license shall furnish to the

commission before renewing a license evidence of satisfactorily completing a continuing education course or courses approved by the commission. The length of the course or courses taken by licensees to meet this requirement of continuing education shall total at least six instructional hours for each year of the renewal period established by the commission. The commission shall not require the passing of an examination to meet this requirement. Continuing education courses shall be provided by all educational or duly authorized instructional organizations teaching real estate licensing courses. No licensee whose license has been placed on inactive status shall be allowed to reactivate unless the provisions of this subsection and subsection (g) of Code Section 43-40-12 are met. Individuals serving on active duty in the armed forces of the United States or in the General Assembly may choose not to meet the continuing education requirements of this subsection while on active duty or during their terms of office. Members of the armed forces or the General Assembly who choose to exercise this temporary exemption option and whose term of active duty or of office exceeds two years shall be required to complete the 25 instructional hour course referenced in subsection (d) of this Code section within six months of the conclusion of their active duty or term of office.

(f) Instructors in all of the approved courses shall be approved by the commission and, where the commission deems necessary, receive any special instruction the commission may require.

(g) Failure to complete any of the educational requirements as provided in this Code section shall be grounds for denial of a license or denial of renewal of a license without further hearing. No fees or portion of fees paid shall be refunded if a licensee fails to meet the continuing education provisions of subsections (d) and (e) of this Code section or any other provisions of this chapter.

(h) The commission may prepare and distribute to licensees under this chapter educational material deemed of assistance in the conduct of their business. The commission may prepare and distribute to the public educational material deemed of assistance to consumers engaging in business in real estate transactions with persons licensed under this chapter.

(i) The commission, through its rules and regulations, shall establish standards for the approval of schools and instructors to offer the education courses required by this chapter. Each approved school shall comply with Code Sections 43-40-15 through 43-40-31. Each approved school shall designate an individual approved by the commission to act as its director and such designated individual shall be responsible for assuring that the approved school complies with the requirements of this chapter and rules and regulations promulgated under this chapter. An approved school shall authorize its director to bind the school to any

settlement of a contested case before the commission as defined in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The commission, through its rules and regulations, shall establish standards for the offering of the prelicense education courses required by this chapter by methods of instruction, which it deems to be educationally sound, other than in-class instruction. The commission, through its rules and regulations, may establish standards for the offering of continuing education courses required by this chapter by methods of instruction, which it deems to be educationally sound, other than in-class instruction. (Ga. L. 1925, p. 325, § 6; Code 1933, § 84-1409; Ga. L. 1949, p. 943, § 3; Ga. L. 1950, p. 278, § 2; Ga. L. 1965, p. 629, § 5; Ga. L. 1968, p. 277, § 2; Code 1933, § 84-1411, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 1974, p. 375, § 1; Ga. L. 1979, p. 1203, § 2; Ga. L. 1981, p. 1311, § 4; Ga. L. 1982, p. 1001, §§ 3, 10; Ga. L. 1984, p. 844, §§ 1, 2; Ga. L. 1985, p. 360, § 3; Ga. L. 1986, p. 364, §§ 1, 2; Ga. L. 1987, p. 252, § 1; Ga. L. 1990, p. 650, § 2; Ga. L. 1991, p. 642, § 1; Ga. L. 1996, p. 6, § 43; Ga. L. 1996, p. 194, § 4; Ga. L. 1997, p. 410, § 1; Ga. L. 2006, p. 792, §§ 5, 6/SB 547; Ga. L. 2007, p. 483, § 5/SB 114; Ga. L. 2008, p. 324, § 43/SB 455.)

Cross references. — Exemption of real estate brokers or salesmen from registration requirements for dealers in securities, § 10-5-30.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, "43-40-31"

was substituted for "43-40-32" in the second sentence of subsection (i).

Law reviews. — For annual survey of law of real property, see 38 Mercer L. Rev. 319 (1986).

JUDICIAL DECISIONS

Realtor license requirements constitutional. — Plaintiff, a non-resident realtor, failed to show how Georgia broker licensing requirement constituted an unreasonable or illegal burden on interstate commerce. *Krizan v. Newman & Co.*, 246 Ga. 214, 271 S.E.2d 135 (1980).

Commission's rule-making power relates to administration of courses of study. — Rule-making power of the Real Estate Commission is to pass rules and regulations relating to administration of (but not inconsistent with) its approval of courses of study of real estate. *Georgia Real Estate Comm'n v. Acceler-*

ated Courses in Real Estate, Inc., 234 Ga. 30, 214 S.E.2d 495 (1975).

Commission may relax own rules on course time per day. — Real Estate Commission has authority to levy approval of 24-hour course which consists of three days of instruction of eight hours each, although commission rules allow only for three hours or less per day classroom study. *Georgia Real Estate Comm'n v. Accelerated Courses in Real Estate, Inc.*, 234 Ga. 30, 214 S.E.2d 495 (1975).

Cited in *Citizens & S. Nat'l Bank v. AVCO Fin. Servs., Inc.*, 129 Ga. App. 605, 200 S.E.2d 309 (1973).

OPINIONS OF THE ATTORNEY GENERAL

Three years as salesperson is prerequisite to taking broker's license test. — An individual may not take a broker's licensing examination unless the

individual has first served actively for a minimum of three years as a licensed salesperson. 1977 Op. Att'y Gen. No. 77-4.

Mandatory three years' sales expe-

rience need not occur just before application. — Individual who has held a real estate salesperson's license for three years and had three years' real estate business experience should be allowed to

take a broker's examination even though the three years' experience did not immediately precede the date application was filed for a broker's examination. 1972 Op. Att'y Gen. No. 72-22.

RESEARCH REFERENCES

ALR. — Licensed real estate broker's right to compensation as affected by lack of license on the part of partners, coadventurers, employees, or other associates, 8 ALR3d 523.

Right of attorney, as such, to act or become licensed to act as real-estate broker, 23 ALR4th 230.

43-40-9. Nonresident licensees; service of process; reciprocity; contracts with licensed Georgia brokers.

(a) A nonresident holding a license on July 1, 1991, shall not be required to meet the requirements of this Code section in order to continue to hold a license unless such nonresident allows that license to lapse or applies for a different type of license.

(b) The commission may grant a license to a nonresident of this state who is not licensed in such nonresident's state of residence if that applicant meets the age, education, and examination requirements prescribed in Code Section 43-40-8.

(c) In order to be licensed in this state, nonresidents who are licensed in another state must meet any requirements established by the commission, which may include:

(1) Show satisfactory proof of current licensure in the applicant's state of residence;

(2) Pay any required fees;

(3) Sign a statement which states that the applicant has read this chapter and its rules and regulations and agrees to abide by its provisions in all brokerage activity in this state;

(4) Affiliate with a resident or nonresident broker if the applicant is an individual community association manager, salesperson, or associate broker. If a nonresident licensee terminates the affiliation with a broker licensed by the commission, the license of such nonresident shall automatically be terminated unless such nonresident places the license on inactive status or affiliates with another broker licensed by the commission within 30 days. No license shall be issued to any member, officer, independent contractor, employee, or partner of a nonresident firm until said firm qualifies for a broker's license. A nonresident corporation or limited liability company must obtain from the proper agency and maintain a certificate of authority to transact business in this state;

(5) Provide any documentation required by the commission of the applicant's licensure in any other state and copies of the records of any disciplinary actions taken against the applicant's license in that or other states. The imposition of a disciplinary action by any other lawful licensing authority may be grounds for denial of license to a nonresident or for suspension or revocation of a license issued to a nonresident;

(6) File with the commission a designation in writing that appoints the real estate commissioner to act as the licensee's agent, upon whom all judicial and other process or legal notices directed to such licensee may be served. Service upon the real estate commissioner shall be equivalent to personal service upon the licensee. Copies of such appointment, certified by the real estate commissioner, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. In such written designation, the licensee shall agree that any lawful process against the licensee which is served upon the real estate commissioner shall be of the same legal force and validity as if served upon the licensee, and that authority shall continue in force so long as any liability remains outstanding in this state. Upon the receipt of any such process or notice, the real estate commissioner shall immediately mail a copy of the same by certified mail or statutory overnight delivery to the last known business address of the licensee; and

(7) Agree in writing to cooperate with any investigation initiated by the commission by promptly supplying any documents any authorized investigator of the commission may request and by personally appearing at the commission's offices or other location in this state as the commission's investigator may request. If the commission sends a notice to produce documents or to appear for an interview with an authorized investigator of the commission by certified mail or statutory overnight delivery to the last known business address of a nonresident licensee and the nonresident licensee fails to comply with that request, the commission may impose on the nonresident licensee any disciplinary sanction permitted under this chapter.

(d) The commission in its discretion may enter into written agreements with similar licensing authorities of other states as may be necessitated by those states' laws to assure for Georgia licensees nonresident licensure opportunities comparable to those afforded to nonresidents by this Code section. Whenever the commission determines that another state does not offer nonresident licensure to Georgia licensees with requirements substantially comparable to those afforded to licensees of that state by this Code section, the commission shall require licensees of such state who apply for nonresident licensure to

meet education, experience, and examination requirements substantially comparable to those required by that state with respect to Georgia licensees who seek nonresident licensure, not to exceed such requirements as prescribed in Code Section 43-40-8.

(e)(1) Notwithstanding any other provision of this Code section, a licensed broker of another state may enter into a written agreement with a Georgia broker to conduct the real estate brokerage business in Georgia without first obtaining a Georgia license. The Georgia broker shall be responsible for all real estate brokerage acts performed by the out-of-state broker under such written agreement and for determining that the out-of-state broker has and maintains an active license in the out-of-state broker's state of residence. For purposes of this subsection, a "licensed broker of another state" means the licensed broker and other brokers or salespersons licensed under such broker. The Georgia broker shall maintain for at least three years after its expiration date a copy of any written agreement into which such Georgia broker enters with a licensed broker of another state. Each written agreement shall provide:

(A) For procedures to be followed in the event of the out-of-state broker's performing any of the acts of a broker on real property located in Georgia;

(B) How the brokers will divide any earned commissions;

(C) That any listing or property management agreement for Georgia real property in which the out-of-state broker will participate shall be in the name of the Georgia broker;

(D) That the out-of-state broker shall conduct negotiations with any client of a Georgia broker only with the express permission of the Georgia broker;

(E) That any advertisement by any means of Georgia real property shall identify the listing Georgia broker;

(F) That any contracts, agreements, or offers on Georgia real property shall clearly identify the Georgia broker and the out-of-state broker with the statement that the out-of-state broker is not licensed by the Georgia Real Estate Commission; that said contract, agreement, or offer shall be construed under Georgia law; and that the superior courts of this state shall have jurisdiction over any actions which may be brought against either broker as a result of such contract, agreement, or offer;

(G) That any trust funds obtained in any transaction involving any real property in Georgia by an out-of-state broker shall be held in the trust account of the Georgia broker unless agreed otherwise

in writing by the party or parties having any interest in said trust funds; and

(H) Such other matters as the commission may require by rule and regulation.

(2) Notwithstanding any other provision of this Code section, the commission in its discretion may enter into written agreements with similar licensing authorities of other states to permit persons licensed in those states to conduct real estate brokerage business in Georgia without obtaining a license in Georgia, provided that such other states afford the same opportunities to Georgia licensees.

(3) Notwithstanding any other provision of this chapter, when a licensed broker of another state is acting only as a referral agent which involves only the mere referral of one person to another and such referring broker is not involved in the actual negotiations, execution of documents, collection of rent, management of property, or any other real estate brokerage activity, a licensed broker in Georgia may divide or share a real estate commission with such licensed broker in another state.

(f) Whenever an out-of-state broker operating under a written agreement permitted by subsection (e) of this Code section violates any provision of this chapter, for such violation by the out-of-state broker the commission shall be limited to suspending or revoking the Georgia broker's right to enter into such written agreements with out-of-state brokers unless the Georgia broker participated in or ratified the violation of the out-of-state broker or failed to include in such written agreement all provisions required by subsection (e) of this Code section and the commission's rules and regulations.

(g) Reserved. (Ga. L. 1925, p. 325, § 15; Code 1933, § 84-1422; Ga. L. 1965, p. 629, § 10; Code 1933, § 84-1415, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 1980, p. 1398, § 6; Ga. L. 1985, p. 360, §§ 4, 5; Ga. L. 1987, p. 252, § 2; Ga. L. 1989, p. 1619, §§ 2, 3; Ga. L. 1990, p. 650, § 3; Ga. L. 1991, p. 642, § 2; Ga. L. 1993, p. 123, § 51; Ga. L. 1996, p. 194, §§ 5, 6; Ga. L. 1997, p. 410, §§ 1.1, 2; Ga. L. 1998, p. 196, § 3; Ga. L. 2000, p. 1527, § 13; Ga. L. 2000, p. 1589, § 3; Ga. L. 2002, p. 415, § 43; Ga. L. 2003, p. 370, § 8.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to paragraphs (c)(6) and (c)(7) are applicable with respect to notices delivered on or after July 1, 2000.

Cross references. — Cooperation be-

tween Georgia and other states generally, T. 28, C. 6.

Law reviews. — For article surveying developments in Georgia real property law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 219 (1981).

JUDICIAL DECISIONS

Closing in state brings contract under chapter. — In suit brought by Iowa realtor to recover fee under letter agreement and otherwise because a sale was consummated and closed with one of the realtor's clients, when closing was an act essential to recovery and the closing occurred in Georgia, provisions of O.C.G.A. Ch. 40, T. 43 were applicable. *Krizan v. Newman & Co.*, 246 Ga. 214, 271 S.E.2d 135 (1980).

When contract governed by foreign state's laws. — When pleaded contract not only is executed in a foreign state, but contains nothing to indicate by place of

performance or otherwise that the contract was intended to be construed as a Georgia contract, it will be treated as a contract of the foreign state, and governed by the foreign state's laws. *Mathews v. Greiner*, 130 Ga. App. 817, 204 S.E.2d 749 (1974).

Foreign land contracts enforced unless violative of enforcing state's public policy. — Land brokerage contracts made and performed in another state will be enforced unless such state's laws are contrary to public policy of enforcing state. *Mathews v. Greiner*, 130 Ga. App. 817, 204 S.E.2d 749 (1974).

OPINIONS OF THE ATTORNEY GENERAL

"Brokerage business" logically consists of activities which define "broker" as listed in paragraph (2) of former Code 1933, § 84-1401 (see O.C.G.A. § 43-40-1). 1977 Op. Att'y Gen. No. 77-1.

Nonresident broker can serve as qualifying broker for out-of-state corporation setting up office to do business in this state. 1977 Op. Att'y Gen. No. 77-1.

43-40-10. Requirements for firm to be granted broker's license.

No broker's license shall be granted to a firm unless:

(1) Said firm designates an individual licensed as a broker as its qualifying broker who shall be responsible for assuring that the firm and its affiliated licensees comply with the provisions of this chapter and its attendant rules and regulations; and

(2) Said firm authorizes its qualifying broker to bind the firm to any settlement of a contested case before the commission as defined in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," in which said firm may be a named respondent.

Violations of this chapter or its rules and regulations by a firm licensed as a broker shall subject the license of the qualifying broker to sanction as authorized by this chapter. No broker's license shall be granted to a firm unless every person who acts as a licensee for such firm shall hold a real estate license. (Code 1933, § 84-1414, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 1974, p. 382, § 1; Ga. L. 1980, p. 1398, § 5; Ga. L. 1982, p. 1001, §§ 6, 11; Ga. L. 1984, p. 22, § 43; Ga. L. 1985, p. 360, § 6; Ga. L. 1987, p. 252, § 3; Ga. L. 1988, p. 13, § 43; Ga. L. 1993, p. 123, § 52; Ga. L. 1995, p. 1216, § 4; Ga. L. 1996, p. 6, § 43; Ga. L. 2000, p. 1527, § 14; Ga. L. 2003, p. 370, § 9; Ga. L. 2004, p. 631, § 43; Ga. L. 2006, p. 792, § 7/SB 547.)

Law reviews. — For article, "Real Estate Syndications As Securities in Georgia — A Review and Comments on the Recent Opinion of the Attorney General," see 11

Ga. St. B.J. 80 (1974). For article, "A Response: Real Estate Syndications As Securities in Georgia," see 11 Ga. St. B.J. 153 (1975).

JUDICIAL DECISIONS

Cited in *Azar-Beard & Assocs. v. Wallace*, 146 Ga. App. 671, 247 S.E.2d 154 (1978).

OPINIONS OF THE ATTORNEY GENERAL

Nonresident broker can serve as a qualifying broker for an out-of-state corporation or partnership setting up an office to do business in this state. 1977 Op. Att'y Gen. No. 77-1.

Licensed broker in corporation may delegate contract signing. — If a

real estate brokerage corporation has an officer who is a duly licensed broker, it is not necessary that such broker sign all sales contracts; this duty may be delegated to an agent of the firm. 1970 Op. Att'y Gen. No. U70-127.

RESEARCH REFERENCES

ALR. — Right of corporation to engage in business, trade, or activity requiring license from public, 165 ALR 1098.

43-40-11. Form of license.

The commission shall prescribe the form of the license. Each license shall have placed thereon the seal of the commission. The license of each affiliated licensee shall be delivered or mailed to the real estate broker for whom the licensee is acting and shall be kept in the custody and control of such broker. The commission shall prepare and deliver a pocket card certifying that the person whose name appears thereon is a licensee. (Ga. L. 1925, p. 325, § 8; Code 1933, § 84-1412; Ga. L. 1965, p. 629, § 6; Code 1933, § 84-1417, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 1974, p. 379, § 3; Ga. L. 1977, p. 880, § 3; Ga. L. 1984, p. 844, § 3; Ga. L. 1985, p. 360, § 7; Ga. L. 2003, p. 370, § 10.)

JUDICIAL DECISIONS

Compliance does not affect ability to collect commission. — Whether or not the plaintiff is in compliance with O.C.G.A. §§ 43-40-11 and 43-40-18 has no bearing on the plaintiff's ability to collect a commission under O.C.G.A. § 43-40-24. *Newman v. James M. Vardaman & Co.*, 162 Ga. App. 878, 293 S.E.2d 462 (1982).

Cited in *Citizens & S. Nat'l Bank v. AVCO Fin. Servs., Inc.*, 129 Ga. App. 605, 200 S.E.2d 309 (1973); *Clark v. Georgia Real Estate Comm'n*, 129 Ga. App. 741, 200 S.E.2d 926 (1973).

43-40-12. Fees; inactive status; licensure of broker as salesperson; penalty fees; extension of renewal period.

(a) To pay the expense of the maintenance and operation of the office of the commission and the enforcement of this chapter, the commission shall establish reasonable fees in accordance with Code Sections 43-40-13 and 43-40-3 and in accordance with its rule-making authority. No fee or portion of a fee required under this chapter which is paid to the commission shall be refunded. Each licensee shall be responsible for filing his or her own fees.

(b) When the commission administers an examination, at the time an application for examination is submitted, the commission shall collect from the applicant a fee for the examination and an investigation fee if necessary. If an applicant fails to pass an examination, upon filing a new application and paying an additional fee, the applicant may take another examination as soon as scheduling permits.

(c) Prior to the issuance of an original license, each applicant who has passed the examination required by Code Section 43-40-8, each firm which is an applicant for a broker's license, and each corporation, limited liability company, or partnership which is an applicant for an associate broker license or a salesperson license shall pay an activation fee in advance.

(d) All licenses shall be renewed periodically as determined by the commission in its rules and regulations, and the commission shall charge a fee for any such license renewed. When renewing a license, a broker must complete a form prescribed by the commission regarding the status of such broker's trust account or accounts and any trust account or accounts that the broker allows affiliated licensees to maintain. The time for renewal of a license and the number of years for which it may be renewed shall be in the discretion of the commission. All fees shall be deposited into the state treasury for the expenses of the commission. This Code section shall not obviate any other fees or conditions required to maintain such license in accordance with this chapter. A license not renewed in accordance with this subsection shall be viewed as lapsed.

(e) Applications and fees must be filed personally in the commission's offices during regular business hours or may be mailed to the commission's offices in a letter postmarked by the United States Postal Service. The commission, through its rules and regulations, may establish standards for the filing of applications and fees by electronic means or by courier services.

(f) Any licensee whose license lapses for failure to pay a renewal fee may reinstate that license within two years of the date of its lapsing by

paying the total amount of all renewal fees and late charges which would have been due during the period when the license was lapsed plus a reinstatement fee. If any licensee who has passed an examination administered by or approved by the commission allows a license to lapse for a period longer than two years and less than five years due solely to a failure to pay a renewal fee, the licensee may reinstate that license by paying the total amount of all renewal fees and late charges which would have been due during the period when the license was lapsed plus a reinstatement fee and by successfully completing any educational course or courses which the commission may require. Any licensee whose license has lapsed for longer than five years for failure to pay a renewal fee and who seeks to reinstate that license shall meet the education and examination requirements for that license as set forth in Code Section 43-40-8. Any nonresident licensee whose license lapses for failure to pay a renewal fee may reactivate that license by paying the fee required of an original applicant if such nonresident licensee has maintained an active license in his or her state of residence during the period that his or her license lapsed and has met its continuing education requirements. Any licensee whose license has lapsed for longer than one year and who is not subject to the continuing education requirements of subsection (e) of Code Section 43-40-8 and who reinstates such license under the terms of this subsection shall thereafter be subject to the continuing education requirements of subsection (e) of Code Section 43-40-8.

(g) Any real estate broker who does not wish to be actively engaged in the brokerage business or any licensee who is temporarily not actively engaged on behalf of a broker may continue a license by making a written request within 30 days of ceasing work that the license be placed on inactive status. Any licensee whose license has been placed on an inactive status shall not engage in the real estate brokerage business except in connection with property owned by the licensee. To reinstate a license held on inactive status, a licensee other than a broker shall secure the signature of the broker for whom the licensee wishes to act; and a broker shall make application to the commission prior to resuming brokerage activity. Any individual licensee who seeks to activate a license which has been on inactive status shall first meet the continuing education requirement of subsection (e) of Code Section 43-40-8 which would have been required had such person been on active status unless such person maintained an active license in another state that has continuing education requirements while such licensee's license was on inactive status in Georgia.

(h) Any licensee who places a license on inactive status shall be required to pay the license renewal fee provided for in subsection (d) of this Code section. Whenever any licensee on inactive status fails to pay the required renewal fees, the licensee's license shall be lapsed. If a

licensee on inactive status changes address, the licensee shall notify the commission of the new address, in writing, within 30 days.

(i) Any check which is presented to the commission as payment for any fee which the commission is permitted to charge under this chapter and which is returned unpaid may be cause for denial of license or for imposing any sanction permitted under Code Section 43-40-25.

(j) Any licensed broker or associate broker who wishes to be licensed as a salesperson may do so by surrendering that broker's license and applying for a license as a salesperson. No examination shall be required of a licensed broker or associate broker who surrenders that license and applies for a salesperson's license. In the event that such person later wishes to be relicensed as a broker, no additional broker's examination shall be required. When a licensee changes status as contemplated in this subsection, the licensee shall be required to pay the same fee as an original applicant.

(k) Should a license be suspended or revoked, as provided for by this chapter, said suspension or revocation shall prevent the licensee from making either application as set out in subsection (j) of this Code section.

(l) Any school approved to offer required education courses under this chapter and instructors approved to teach those courses shall pay the same original application fee and renewal fee established by the commission for broker applicants and licensees. If such approvals lapse, the school or instructor may reinstate the approval by paying the total amount of all renewal fees and late charges which would have been due during the period the approval was lapsed plus a reactivation fee and by successfully completing any educational course or courses which the commission may require.

(m) A reasonable fee, not to exceed the renewal fee charged broker licensees, may be imposed by the commission on a licensee who:

(1) Fails to notify the commission in writing within 30 days of a change of address, of the opening or closing of a designated trust account, of transferring to a new company, or of leaving a firm to go on inactive status;

(2) Fails to affiliate with a new company or to apply to go on inactive status within 30 days of the commission's receipt of notice that the broker holding the licensee's license no longer wishes to do so and has mailed a letter to the licensee's last known address indicating that the broker is returning the license to the commission;

(3) Fails to respond within 30 days to a written inquiry from the commission requesting further information on any application the licensee has filed with the commission; and

(4) Submits to the commission a check that is returned unpaid.

(n) Whenever a licensee who resides in a county designated as a disaster area by state or federal authorities suffers uninsured major damage or loss to such licensee's residence or place of business, the commission may extend such licensee's renewal period for up to two years without further payment of any fee by the licensee upon satisfactory proof of the licensee's uninsured major damage or loss. The commission is further authorized to make appropriate adjustments in deadline dates mandated by this chapter for applications filed by applicants and licensees located in counties designated as disaster areas by state or federal authorities. (Ga. L. 1925, p. 325, § 10; Ga. L. 1927, p. 307, §§ 23, 24; Code 1933, § 84-1415; Ga. L. 1965, p. 629, §§ 7, 8; Code 1933, § 84-1412; Ga. L. 1965, p. 629, § 7; Ga. L. 1973, p. 100, § 1; Ga. L. 1974, p. 379, §§ 2, 3; Ga. L. 1977, p. 880, §§ 1, 2; Ga. L. 1978, p. 231, § 3; Ga. L. 1980, p. 1398, § 3; Ga. L. 1982, p. 3, § 43; Ga. L. 1982, p. 1001, §§ 4, 12; Ga. L. 1983, p. 1411, § 1; Ga. L. 1984, p. 22, § 43; Ga. L. 1984, p. 844, § 4; Ga. L. 1985, p. 360, § 8; Ga. L. 1986, p. 364, § 3; Ga. L. 1987, p. 3, § 43; Ga. L. 1987, p. 252, § 4; Ga. L. 1989, p. 1619, § 4; Ga. L. 1991, p. 642, § 3; Ga. L. 1993, p. 123, § 53; Ga. L. 1995, p. 1216, § 5; Ga. L. 1996, p. 194, § 7; Ga. L. 1998, p. 196, § 4; Ga. L. 2000, p. 1527, § 15; Ga. L. 2007, p. 483, § 6/SB 114.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Civil Code 1910, § 1888, are included in the annotations for this Code section.

While license expires on December 31 of each odd numbered year, it may be automatically continued upon payment of statutory fee. In effect, there is no interruption of the license between end of biennial period of which it was issued and beginning of new biennial period. *Georgia Real Estate Comm'n v. Howard*, 133 Ga. App. 199, 210 S.E.2d 357 (1974).

License fee is not an occupation tax but is regulatory in character, and is intended to provide funds with which Real Estate Commission may carry out intent and purposes of Act. *Snipes v. Flournoy*,

178 Ga. 815, 174 S.E. 617 (1934) (decided under former Civil Code 1910, § 1888).

Broker may be required to pay higher fee than salesperson. — Larger fee and a different character of certificate may be required from a real estate broker in order to secure a license to do business than what would be required from a mere salesperson in the broker's employ. *Camp v. State*, 171 Ga. 25, 154 S.E. 436 (1930).

Rationale behind setting different fees for different classifications. — It is perfectly reasonable to fix a license tax upon brokers different from that on salespeople, especially since salesperson is one employed by the broker as a general matter of classification. It is the same principle as the classification of insurance company and insurance salespeople. *Camp v. State*, 171 Ga. 25, 154 S.E. 436 (1930).

OPINIONS OF THE ATTORNEY GENERAL

Corporations may obtain broker licenses for each representative. — Corporations or partnerships desiring to have

one of its officials or representatives act as a real estate broker may have a broker's license issued to it upon payment of a fee;

additional brokers' licenses are issuable to a corporation or partnership upon payment of a fee for each such additional license. 1948-49 Op. Att'y Gen. p. 332.

43-40-13. Disposition of fees collected under chapter.

All fees collected pursuant to this chapter shall be deposited by the commission into the state treasury. Out of the funds thus arising shall be paid the expenses contemplated in this chapter for the administration and enforcement of this chapter. All expenditures authorized by the commission shall be paid from the funds received pursuant to this chapter. The expenses of the commission and the commissioner must always be kept within the income collected and deposited in accordance with this chapter; and the expense thereof shall not be supported or paid from any other state fund. (Code 1933, § 84-1413, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 1980, p. 1398, § 4; Ga. L. 1982, p. 1001, §§ 5, 13.)

43-40-14. Power of commission to issue, revoke, or suspend licenses and censure licensees; power to enter contracts; retention of funds.

The commission shall have the full power to regulate the issuance of licenses, to revoke or suspend licenses issued under this chapter, and to censure licensees. The commission is authorized to enter into such contracts as are necessary to carry out its duties under this chapter; provided, however, the commission may enter into contracts to assist it in the conduct of investigations and examinations of brokers' trust accounts authorized by this chapter only whenever it needs special legal or accounting expertise or other extraordinary circumstances exist. Whenever the commission contracts to perform such investigation or examination of trust account functions, any such contractor working on an investigation or examination of a trust account authorized by this chapter shall be under the supervision of the commission or an employee of the commission. Any contractor used by the commission shall be knowledgeable in the work area for which such contractor is retained. A contractor shall not be empowered to determine the disposition of any investigation or examination of a trust account nor to make any discretionary decision that the commission is authorized by law to make. Notwithstanding any other provision of law, the commission is authorized to retain all funds received as collection fees for use in defraying the cost of collection of fees required under this chapter. Any such funds not expended for this purpose in the fiscal year in which they are generated shall be deposited in the state treasury; provided, however, that nothing in this Code section shall be construed so as to allow the commission to retain any funds required by the Constitution to be paid into the state treasury; provided, further, that the commis-

sion shall comply with all provisions of Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act," except Code Section 45-12-92, prior to expending any such funds. (Code 1933, § 84-1408, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 1997, p. 410, § 3.)

RESEARCH REFERENCES

ALR. — Revocation or suspension of real-estate broker's license for conduct not connected with business as broker, 22 ALR4th 136. Grounds for revocation or suspension of license of real-estate broker or salesperson, 7 ALR5th 474.

43-40-15. Grant, revocation, or suspension of licenses; other sanctions; surrender or lapse; conviction; noncompliance with child support order; borrowers in default.

(a) Licenses shall be granted only to persons who bear a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a licensee in such manner as to safeguard the interest of the public and only after satisfactory proof of such qualifications has been presented to the commission. The commission may deny a license to a corporation, limited liability company, or partnership if a stockholder, member, or partner or any combination thereof which owns more than a 20 percent interest therein does not bear a good reputation for honesty, trustworthiness, and integrity; has been convicted of any of the crimes enumerated in subsection (b) of this Code section; or has been sanctioned by any legally constituted regulatory agency for violating a law regulating the sale of real estate.

(b)(1) As used in this Code section, the term:

(A) "Conviction" means a finding or verdict of guilty or a plea of guilty to a charge of a felony or any crime involving moral turpitude, regardless of whether an appeal of the conviction has been brought; a sentencing to first offender treatment without an adjudication of guilt pursuant to a charge of a felony or any crime involving moral turpitude; or a plea of nolo contendere to a charge of a felony or any crime involving moral turpitude.

(B) "Felony" includes any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere.

(1.1) No person who has a conviction shall be eligible to become an applicant for a license or an approval authorized by this chapter unless such person has successfully completed all terms and conditions of any sentence imposed for such conviction; provided that if such individual has multiple convictions, at least five years shall have passed since the individual satisfied all terms and conditions of

any sentence imposed for the last conviction before making application for licensure or approval; provided, further, that if such individual has a single conviction, at least two years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval.

(1.2) A person who has a conviction in a court of competent jurisdiction of this or any other state, district, or territory of the United States, or of a foreign country, shall be eligible to become an applicant for a licensure or an approval authorized by this chapter only if:

(A) Such person has satisfied all terms and conditions of any conviction such person may have had before making application for licensure or approval; provided that if such individual has multiple convictions, at least five years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval; provided, further, that if such individual has been convicted of a single felony or of a single crime of moral turpitude, at least two years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval;

(B) No criminal charges for forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, a felony, a sex offense, a probation violation, or a crime involving moral turpitude are pending against the person; and

(C) Such person presents to the commission satisfactory proof that the person now bears a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a licensee in such a manner as to safeguard the interest of the public.

(2) Where an applicant for any license or approval authorized by this chapter has been convicted of forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or other like offense or offenses or has been convicted of a felony, a sex offense, a probation violation, or a crime involving moral turpitude and has been convicted thereof in a court of competent jurisdiction of this or any other state, district, or territory of the United States or of a foreign country such conviction in itself may be sufficient ground for refusal of a license or approval authorized by this chapter. An applicant for licensure as an associate broker or a broker who has been convicted of any offense enumerated in this paragraph may be licensed by the commission as an associate broker or a broker only if:

(A) At least ten years have passed since the applicant was convicted, sentenced, or released from any incarceration, whichever is later;

(B) No criminal charges are pending against the applicant; and

(C) The applicant presents to the commission satisfactory proof that the applicant now bears a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a licensee in such a manner as to safeguard the interest of the public.

(c) Where an applicant or licensee has been found guilty of a violation of the federal fair housing law or Article 4 of Chapter 3 of Title 8 by an administrative law judge or a court of competent jurisdiction and after any appeal of such conviction is concluded, such conviction may in itself be a sufficient ground for refusal of a license or the imposition of any sanction permitted by this chapter.

(d) Where an applicant or licensee has made a false statement of material fact on his or her application or caused to be submitted or been a party to preparing or submitting any falsified application to the commission, such action may, in itself, be a sufficient ground for the refusal, suspension, or revocation of the license.

(e) Grounds for suspension or revocation of a license, as provided for by this chapter, shall also be grounds for refusal to grant a license.

(f) The conduct provided for in subsections (a), (b), (c), (d), and (h) of this Code section which relates to the denial of a real estate license to an applicant shall also be grounds for imposition of any sanction permitted by this chapter when the conduct is that of a licensee.

(g) Whenever the commission initiates an investigation as permitted by Code Section 43-40-27 to determine whether a licensee has violated any provision of this chapter or its rules and regulations and such licensee has:

(1) Surrendered or voluntarily surrenders the license to the commission;

(2) Allowed or allows the license to lapse due to failure to meet educational requirements provided by law; or

(3) Allowed or allows the license to lapse due to failure to pay any required fees

then if such surrender or lapsing takes place after the commission has filed a notice of hearing alleging that such licensee has violated any provision of this chapter or its rules and regulations, but before the commission enters a final order in the matter, then upon submission of

a new application by such licensee the matters asserted in the notice of hearing shall be deemed admitted and may be used by the commission as grounds for refusal of a new license to such licensee. If such surrender or lapsing takes place prior to the commission's filing of a notice of hearing, but after the commission initiates an investigation as permitted by Code Section 43-40-27, then the commission may issue an order revoking such licensee's license. Such order of revocation shall be final ten days after it is issued unless the licensee named in the order requests a hearing before the commission. If such licensee requests a hearing, the commission shall file a notice of hearing and provide a hearing for such licensee in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(h) Whenever any occupational licensing body of this state, any other state, or any foreign country has sanctioned the license of an applicant for any license authorized by this chapter or whenever such an applicant has allowed a license to lapse or has surrendered a license to any occupational licensing body of this state, any other state, or any foreign country after that body has initiated an investigation or a disciplinary process regarding such applicant's license, such sanction, lapsing, or surrender in itself may be a sufficient ground for refusal of a license. Whenever any occupational licensing body of this state, any other state, or any foreign country has revoked the license of an applicant for any license authorized by this chapter or whenever such an applicant has allowed a license to lapse or has surrendered a license to any occupational licensing body of this state, any other state, or foreign country after that body has initiated an investigation or a disciplinary process regarding such applicant's license, the commission may issue an associate broker's or a broker's license only if:

(1) At least ten years have passed since the date that the applicant's occupational license was revoked or surrendered;

(2) No criminal charges are pending against the applicant at the time of application; and

(3) The applicant presents to the commission satisfactory proof that the applicant now bears a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a licensee in such a manner as to safeguard the interest of the public.

(i) Whenever any licensee is convicted of any offense enumerated in subsection (b) of this Code section, the licensee must immediately notify the commission of that conviction. The licensee's license shall automatically be revoked 60 days after the licensee's conviction unless the licensee makes a written request to the commission for a hearing during that 60 day period. Following any such hearing requested pursuant to this subsection, the commission in its discretion may impose upon that licensee any sanction permitted by this chapter.

(j) Whenever the commission revokes or suspends the license of a community association manager, a salesperson, an associate broker, or a broker, then any school or instructor approval which such licensee holds shall also be revoked or suspended. Whenever a licensee surrenders a real estate license as provided for in subsection (g) of this Code section, any school or instructor approval which such licensee holds shall also be subject to the provisions of subsection (g) of this Code section.

(k) Where an applicant or licensee has been found not in compliance with an order for child support as provided in Code Section 19-6-28.1 or 19-11-9.3, such action is sufficient grounds for refusal of a license or suspension of a license. In such actions, the hearing and appeal procedures provided for in those Code sections shall be the only such procedures required under this chapter.

(l) Where an applicant or licensee has been found to be a borrower in default who is not in satisfactory repayment status as provided in Code Section 20-3-295, such status is sufficient grounds for refusal of a license or suspension of a license. In such cases, the hearing and appeal procedures provided for in Code Section 20-3-295 shall be the only such procedures required under this chapter.

(m) Where the commission has previously sanctioned any applicant for a license under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," such sanction may in itself be a sufficient ground for refusing the license. (Ga. L. 1925, p. 325, § 1; Ga. L. 1931, p. 231, § 1; Code 1933, § 84-1409; Ga. L. 1943, p. 572, § 1; Ga. L. 1949, p. 943, § 3; Ga. L. 1950, p. 278, § 2; Ga. L. 1965, p. 629, § 5; Ga. L. 1968, p. 277, § 2; Code 1933, § 84-1410, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 1978, p. 231, § 2; Ga. L. 1981, p. 1311, § 3; Ga. L. 1983, p. 1411, § 2; Ga. L. 1984, p. 844, § 5; Ga. L. 1986, p. 364, §§ 4, 5, 6; Ga. L. 1989, p. 1619, § 5; Ga. L. 1990, p. 8, § 43; Ga. L. 1990, p. 650, § 4; Ga. L. 1991, p. 94, § 43; Ga. L. 1991, p. 642, §§ 4, 5; Ga. L. 1993, p. 123, § 54; Ga. L. 1994, p. 1168, § 2; Ga. L. 1995, p. 1216, § 6; Ga. L. 1996, p. 6, § 43; Ga. L. 1996, p. 194, § 8; Ga. L. 1996, p. 453, § 15; Ga. L. 1998, p. 1094, § 12; Ga. L. 2000, p. 1527, § 16; Ga. L. 2003, p. 370, § 11; Ga. L. 2007, p. 483, § 7/SB 114; Ga. L. 2008, p. 324, § 43/SB 455.)

Cross references. — Failure to enter into satisfactory repayment status and when is a borrower in default, § 20-3-295.

Law reviews. — For note on the 1994 amendment of this Code section, see 11 Georgia St. U.L. Rev. 240 (1994).

JUDICIAL DECISIONS

Applicant made false statement of material fact on application. — Commission was authorized to find that applicant made a false statement of material

fact on application and that applicant, therefore, violated O.C.G.A. § 43-40-15(c), since the applicant signed the application without attaching the details of prior li-

cense revocation, and therefore falsely certified to the Commission that the applicant had never been disciplined. *Georgia Real Estate Comm'n v. Syfan*, 192 Ga. App. 3, 383 S.E.2d 605 (1989).

"Suspension" applies to both license and to licensee; in other words, the license itself is suspended, as well as the licensee's right to practice real estate brokerage for the term of suspension. *Georgia Real Estate Comm'n v. Howard*, 133 Ga. App. 199, 210 S.E.2d 357 (1974).

Suspension of license may be for period greater than unexpired portion of license, and such action by Real Estate Commission is neither in violation of statutory provisions nor in excess of statutory authority of agency. *Georgia Real Estate Comm'n v. Howard*, 133 Ga. App. 199, 210 S.E.2d 357 (1974).

Section 43-40-15 imposes no special duties regarding pets. — O.C.G.A. §§ 10-6A-5, 10-6A-14, 43-40-15(a), and 43-40-25(b)(25) and related code sections fail to impose any duties regarding pets other than the general duty to exercise reasonable skill and care in performing all duties; a trial court's summary judgment dismissing claims against real estate agents and brokers for injuries arising from a dog bite while the injured person was viewing listed property for sale was affirmed. *Gibson v. Rezvanpour*, 268 Ga. App. 377, 601 S.E.2d 848 (2004).

Cited in *Citizens & S. Nat'l Bank v. AVCO Fin. Servs., Inc.*, 129 Ga. App. 605, 200 S.E.2d 309 (1973).

RESEARCH REFERENCES

ALR. — Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 ALR 1388.

Validity of statute or rule which makes specified conduct or condition a ground for cancellation or suspension of license, irrespective of licensee's personal fault, 3 ALR2d 107.

Broker's liability to prospective purchaser for refund of deposit or earnest money where contract fails because of defects in vendor's title, 38 ALR2d 1382.

Grounds for revocation or suspension of license of real estate broker or salesman, 56 ALR2d 573; 22 ALR4th 136.

Disqualification, for bias or interest, of

member of occupation or profession sitting in license revocation proceeding, 97 ALR2d 1210.

Revocation or suspension of real estate broker's license for violation of statutes or regulations prohibiting use of unlicensed personnel in carrying out duties, 68 ALR3d 530.

Real-estate broker's liability to purchaser for misrepresentation or nondisclosure of physical defects in property sold, 46 ALR4th 546.

Grounds for revocation or suspension of license of real-estate broker or salesperson, 7 ALR5th 474.

43-40-16. Refusal to issue licenses; hearings; judicial review.

(a) If the commission, after an application in proper form has been filed with it, accompanied by the proper fee, shall refuse to issue a license to such applicant, the commission shall provide an opportunity for a hearing for such applicant in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Unless otherwise agreed by the commission, all such hearings shall be held in the county of the domicile of the commission.

(b) Any person who has exhausted all administrative remedies available within this chapter and who is aggrieved by a final decision in a contested case is entitled to judicial review in accordance with Chapter 13 of Title 50. Notwithstanding any provision of subsection (b)

of Code Section 50-13-19 to the contrary, initial judicial review of a final decision of the commission shall be available solely in the superior court of the county of domicile of the commission. (Ga. L. 1925, p. 325, §§ 13, 14; Ga. L. 1929, p. 316, §§ 33, 34; Code 1933, §§ 84-1419, 84-1420, 84-1421; Ga. L. 1949, p. 943, §§ 4, 5; Code 1933, § 84-1416, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 2000, p. 1527, § 17; Ga. L. 2003, p. 370, § 12.)

43-40-17. Revocation or suspension of license issued to partnership, limited liability company, or corporation.

Reserved. Repealed by Ga. L. 2003, p. 370, § 13, effective May 30, 2003.

Editor's notes. — This Code section acted by Ga. L. 1973, p. 100, § 1; Ga. L. was based on Code 1933, § 84-1423, enacted by Ga. L. 1995, p. 1216, § 7.

43-40-18. Management of firm and licensed affiliates; compliance with local ordinances.

(a) Licensees who operate from more than one place of business shall comply with all local business ordinances affecting their business operations; provided, however, that no provision of this subsection shall be construed as altering the provisions of Code Section 48-13-17.

(b) A real estate broker or qualifying broker shall be held responsible for any licensee whose license is affiliated with such broker's firm should such licensee violate any of the provisions of this chapter and its attendant rules and regulations unless the broker is able to demonstrate that such broker:

- (1) Had reasonable procedures in place for supervising the affiliate's actions;
- (2) Did not participate in the violation; and
- (3) Did not ratify the violation.

No provision of this subsection shall be construed as altering the provisions of Code Section 43-40-30.1.

(c) The real estate brokerage activities of each firm shall be under the direct management and supervision of a broker or qualifying broker. The broker or qualifying broker shall be responsible for establishing, implementing, and continuing procedures for:

- (1) Reviewing all advertising to ensure compliance with this chapter and its rules and regulations;
- (2) Providing programs for study and review of this chapter and its rules and regulations for all licensed associates;

(3) Reviewing for compliance with this chapter and its rules and regulations all listing contracts, leases, sales contracts, management agreements, and offers to buy, sell, lease, or exchange real property secured or negotiated by the firm's associates. This review shall take place within 30 days of the date of the offer or contract;

(4) Systematic review of the firm's trust accounting practices in order to assure their compliance with this chapter and its rules and regulations;

(5) Ensuring that the firm utilizes only licensed personnel to perform those acts of a licensee which require licensure and that when it pays compensation to an individual licensee, other than another firm, the license of such individual licensee was assigned to the firm by the commission at the time such individual licensee earned the compensation paid;

(6) Ensuring that proper disbursements are made from trust accounts;

(7) Providing continuing and reasonable safekeeping for all records related to real estate transactions which this chapter and its rules and regulations require a broker to maintain;

(8) Providing all licensed personnel with written policies and procedures under which they are expected to operate;

(9) Seeing that the firm and all licensed affiliates enter into a written agreement specifying the terms under which the licensee will be compensated for work during the time of their affiliation and specifying how the licensee will be compensated for work begun but not completed prior to the termination of their affiliation. Other than to determine that such agreements are entered into by licensees and their firm, the commission shall not regulate the content of such agreements or enforce their provisions; and

(10) Assuring that an individual with appropriate management authority is reasonably available to assist licensees and the public in real estate transactions handled by the firm.

(d) While a broker or qualifying broker may elect to delegate any of the management duties cited in subsection (c) of this Code section, such broker or qualifying broker is responsible for the acts of the person to whom such duty is delegated.

(e) Any firm which operates as a sole proprietorship must be owned entirely by a licensed broker. The qualifying broker for a firm which operates as a partnership must be a partner. If all partners of a partnership are corporations, the qualifying broker of such a partnership must be one of the partner corporation's officers whose actions are

binding on both that corporation and the partnership. The qualifying broker for a firm which operates as a limited partnership must be the general partner. If the general partner of a limited partnership is a corporation, the qualifying broker of such a limited partnership must be one of that corporation's officers whose actions are binding on both the corporation and the general partner. The qualifying broker for a firm which operates as a limited liability company must be a member or, if the articles of organization or a written operating agreement vests management of the limited liability company in a manager or managers, a manager may serve as the qualifying broker. The qualifying broker for a firm which operates as a corporation must be an officer of the corporation. The broker or qualifying broker of any real estate firm must have signatory powers on all trust accounts which the firm maintains. (Code 1981, § 43-40-18, enacted by Ga. L. 1993, p. 123, § 55; Ga. L. 1993, p. 1292, § 1; Ga. L. 1994, p. 1168, § 3; Ga. L. 1995, p. 1216, § 8.)

Cross references. — Levy of license, occupation, or professional taxes by counties or municipalities upon real estate brokers at place of principal or branch office, § 48-13-6.

Law reviews. — For note on the 1994 amendment of this Code section, see 11 Georgia St. U.L. Rev. 240 (1994).

JUDICIAL DECISIONS

Compliance does not affect ability to collect commission. — Whether or not plaintiff is in compliance with O.C.G.A. §§ 43-40-11 and 43-40-18 has no bearing on the plaintiff's ability to collect a commission under O.C.G.A. § 43-40-24. *Newman v. James M. Vardaman & Co.*, 162 Ga. App. 878, 293 S.E.2d 462 (1982).

Liability for independent contractor. — Because the home buyers failed to show that a realtor knew of the drainage and flooding issues associated with the buyers' property, but instead claimed that the realtor was liable for negligence or negligent misrepresentation for failure to oversee the sales transaction and failure to oversee the listing agent because it did not comply with the requirements of

O.C.G.A. § 43-40-18 and Ga. Comp. R. & Regs. 520-1-10(4); however, the realtor was not liable for the acts of the listing agent as the listing agent was an independent contractor, and the homebuyers failed to present any evidence that the realtor assumed the right to control the time, manner, or method of the work. *Walker v. Johnson*, 278 Ga. App. 806, 630 S.E.2d 70 (2006), overruled on other grounds, *Kleber v. City of Atlanta*, 291 Ga. App. 146, 661 S.E.2d 195 (2008).

Cited in *Citizens & S. Nat'l Bank v. AVCO Fin. Servs., Inc.*, 129 Ga. App. 605, 200 S.E.2d 309 (1973); *Clark v. Georgia Real Estate Comm'n*, 129 Ga. App. 741, 200 S.E.2d 926 (1973).

OPINIONS OF THE ATTORNEY GENERAL

Allowing licensed persons to be affiliated with more than one real estate firm is permitted by the laws governing real estate brokers, although

certain multiple affiliations could lead to violations of the law in specific situations. 1983 Op. Att'y Gen. No. 83-26.

43-40-19. Change of place of business; transfer of salesperson, associate broker, or community association manager.

(a) Should a broker change the address of the broker's place of business, the broker shall notify the commission, in writing, within 30 days of such change.

(b) When an affiliated licensee leaves a broker for whom such licensee is acting, the broker shall immediately cause the license of that licensee to be forwarded either to the commission or to the new broker for whom the licensee will act. If the wall certificate of licensure is forwarded to the new broker for whom the licensee will act, the broker releasing the licensee shall notify the commission in writing of that action. The releasing broker shall furnish such other information regarding the termination of said licensee as the commission may require. Any licensee whose license is released by a broker shall not engage in the activities of a real estate licensee until the licensee:

(1) Personally delivers to the commission a commission approved application to transfer such licensee's license to a new broker or has the United States Postal Service postmark a letter containing such an application; or

(2) Receives from the commission a wall certificate of licensure authorizing the licensee to serve as the broker or the qualifying broker of a firm.

(c) A licensee transferring to a new broker may continue to act as a licensee for the former broker with regard to transactions begun prior to the transfer, provided:

(1) Both brokers agree in writing to the licensee's actions on behalf of the former broker;

(2) The transactions on which the licensee will act on behalf of the former broker are enumerated in the written agreement between the brokers;

(3) The former broker agrees in writing to assume full responsibility for the licensee's activities in the enumerated transactions; and

(4) The written agreement expresses the terms under which the licensee shall be compensated by the former broker.

(d) A salesperson or community association manager shall not act as a licensee for any broker other than the broker holding the salesperson's or community association manager's license except as provided in subsection (c) of this Code section. (Code 1933, § 84-1418, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 1977, p. 880, § 4; Ga. L. 1980, p. 1398, § 7; Ga. L. 1984, p. 844, § 7; Ga. L. 1985, p. 360, § 9; Ga. L. 1986, p.

364, § 7; Ga. L. 1991, p. 642, § 6; Ga. L. 1993, p. 123, § 56; Ga. L. 1996, p. 194, § 9; Ga. L. 1998, p. 196, § 5; Ga. L. 2000, p. 1527, § 18.)

Cross references. — Levy of license, occupation, or professional taxes by counties or municipalities upon real estate

brokers at place of principal or branch office, § 48-13-6.

JUDICIAL DECISIONS

Applicability. — In an action regarding an alleged breach of an employment contract seeking commissions on deals made by a real estate agent to which a former real estate broker alleged the broker was entitled, the trial court erred in entering summary judgment against the agent, finding that the agent owed the broker commissions as to one of two contested deals because: (1) the agent closed the deal with that client after terminating employment with the broker; and (2) it was undisputed that the agent had not agreed to share commissions with the broker on deals struck after the agent left the broker's employ; thus, since summary judgment was properly entered in the agent's favor regarding commissions paid to the agent as to the second of the two contested clients, the broker was not entitled to litigation costs under O.C.G.A. § 13-6-11. *Morgan v. Richard Bowers & Co.*, 280 Ga. App. 533, 634 S.E.2d 415 (2006).

Construction of an employment contract. — Upon a de novo review of the plain terms outlined in an employment contract, a former employer was not entitled to receive commission payments from a former employee, a licensed sales agent, for deals closed with the employee's subsequent employer as any contrary reading would result in an unenforceable contract under O.C.G.A. § 43-40-19(c); hence, summary judgment was properly granted to the employee on that issue, and the former employer's claim for money had and received also failed. *Richard Bowers & Co. v. Creel*, 280 Ga. App. 199, 633 S.E.2d 555 (2006).

Cited in *Citizens & S. Nat'l Bank v. AVCO Fin. Servs., Inc.*, 129 Ga. App. 605, 200 S.E.2d 309 (1973); *Georgia Real Estate Comm'n v. Hooks*, 139 Ga. App. 34, 227 S.E.2d 864 (1976).

43-40-20. Trust or escrow checking account for real estate business; when entitled to commission.

(a) Each broker who accepts down payments, earnest money deposits, security deposits, rents, association fees, or other trust funds in a real estate brokerage transaction or whose affiliated licensees accept such trust funds shall maintain a separate, federally insured bank checking account in this state which shall be designated a trust or escrow account wherein all down payments, earnest money deposits, or other trust funds received by the broker or the broker's affiliated licensees, on behalf of a principal or any other person, shall be deposited. An account so designated and registered with the commission shall not be subject to attachment or garnishment. A broker who does not accept trust funds in real estate brokerage transactions is not required to maintain a designated trust or escrow account; provided, however, that if a broker does not maintain such a trust or escrow account and later receives trust funds in a real estate brokerage transaction, such broker must open the designated trust or escrow

account required by this subsection within one business day of the receipt of such trust funds.

(b) Each broker who is required to maintain a trust or escrow account shall notify the commission of the name of the bank in which the trust account is maintained and also the number of the account or, if the bank does not use numbered accounts, the name of the account on forms provided therefor.

(c) Each broker who maintains a trust account shall authorize the commission to examine such trust account by a duly authorized representative of the commission. The commission may examine such account at any time upon reasonable cause. The commission shall examine each broker's trust account or accounts during each renewal period. In lieu of an examination of any such account or accounts by a duly authorized representative of the commission, the commission, in its discretion, may accept a written report from a certified public accountant that the broker's trust account or accounts are maintained in accordance with the provisions of this chapter and its attendant rules and regulations. In lieu of the renewal period examination by a duly authorized representative of the commission, the commission may accept with the broker's renewal application and fee a summary of data on the broker's trust account or accounts on a form prepared by or approved by the commission if that data appears complete and includes no indication of irregularities. The commission, after initiating an authorized investigation, may require that a broker supply to it written reports on the status of the broker's designated trust account or accounts.

(d) A broker may maintain more than one trust account if the commission is advised of such account, as specified in subsections (a), (b), and (c) of this Code section.

(e) A broker shall not be entitled to any part of the earnest money, security deposit, or other trust funds paid to the broker in connection with any real estate transaction as part or all of the broker's commission or fee until the transaction has been consummated or terminated.

(f) Any licensee, acting in the capacity of principal in the sale of interests in real estate owned by such licensee, shall deposit in a trust account in a state bank or trust company or any foreign bank which authorizes the commission to examine its records of such deposits those parts of all payments received on contracts which are necessary to meet any amounts concurrently due and payable on any existing mortgages, contracts for deed or other conveyancing instruments, reserves for taxes and insurance, or any other encumbrance on such receipts. Such deposits shall be maintained until disbursement is made under the terms of the encumbrance pertaining thereto and proper accounting on such property is made to the parties entitled thereto.

(g) The commission, in its discretion, may allow a nonresident broker who accepts any trust funds in a real estate brokerage transaction to maintain the trust account required in subsection (a) of this Code section in a bank of such nonresident broker's state of residence, provided that the commission is authorized to examine the account at such time or times as the commission may elect and that the licensee meets the requirements of any rules which the commission may establish regarding the maintenance of such accounts.

(h) Community association managers, salespersons, or associate brokers who receive security deposits or other trust funds on property they own or who receive payments as described in subsection (f) of this Code section must deposit those funds into a designated trust account maintained by the broker with whom their licenses are affiliated or in a designated trust account approved by that broker. If the broker approves the affiliated licensee's holding such trust funds in a designated trust account owned by the licensee, the broker shall assure that the bank in which the account is maintained designates the account as a trust account and the broker shall notify the commission of the name of the bank in which the account is maintained, the number of the account, and the name of the licensee who owns the account. The licensee who owns such account shall maintain such records on the account as are required by this chapter and the applicable rules and regulations for brokers in maintaining their trust accounts. The licensee who owns such account shall provide to such licensee's broker on at least a quarterly basis a written reconciliation statement comparing the licensee's total trust liability with the reconciled bank balance of the licensee's trust account. (Code 1933, § 84-1419, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 1981, p. 1311, § 5; Ga. L. 1982, p. 1001, §§ 7, 14; Ga. L. 1983, p. 1411, § 3; Ga. L. 1984, p. 844, § 8; Ga. L. 1985, p. 360, § 10; Ga. L. 1986, p. 364, § 8; Ga. L. 1987, p. 252, § 5; Ga. L. 1992, p. 1541, § 1; Ga. L. 1996, p. 194, § 10; Ga. L. 1998, p. 196, § 6; Ga. L. 2007, p. 483, § 8/SB 114.)

JUDICIAL DECISIONS

Escrow money not garnishable for broker's debts. — Moneys belonging to others held in escrow by real estate brokers according to Ga. L. 1973, p. 100, § 1 (see O.C.G.A. § 43-40-20) and former Code 1933, § 84-1419 (see O.C.G.A. § 43-40-21) are not subject to garnishment for broker's personal debts. *Citizens & S. Nat'l Bank v. AVCO Fin. Servs., Inc.*, 129 Ga. App. 605, 200 S.E.2d 309 (1973).

Notice of suit held sufficient. — When the plaintiff filed suit against an

incorporated realtor for return of earnest money paid, and subsequently filed a separate action against the broker individually, and notified the Real Estate Commission only at the time the second action was filed, the commission was given notice as required by O.C.G.A. § 43-40-22(d)(1). *Residential Dev., Inc. v. Massicott*, 260 Ga. 319, 392 S.E.2d 706 (1990).

OPINIONS OF THE ATTORNEY GENERAL

Security deposits must be put into escrow. — Requirement that "other trust funds received by the broker ... on behalf of ... any other person, shall be deposited" in the escrow account applies to all funds, including security deposits, which are held by brokers. 1976 Op. Att'y Gen. No. 76-101.

Section 43-40-20 controls over § 43-40-25. — Exception in O.C.G.A. § 43-40-25(a)(5) to the provision enumerating a ground for sanction of a licensee's license, as an indirect authorization, must yield to the direct command in the more extensive provisions in O.C.G.A. § 43-40-20 requiring trust funds to be placed in a trust or escrow account. 1984 Op. Att'y Gen. No. 84-80.

Surety bond not substitute for trust account. — General partner, who is a licensed broker, in a limited partnership may not purchase a surety bond in lieu of placing security deposits in the broker's designated trust account, and, similarly, a

partner in a partnership, who is also a licensed real estate broker, may not purchase a surety bond in lieu of placing deposits in a designated trust account. 1984 Op. Att'y Gen. No. 84-80.

Section 43-40-20 controls over § 44-7-32 as to brokers. — Requirement of former Code 1933, § 84-1419 (see O.C.G.A. § 43-40-20) that brokers maintain security deposits only in an escrow account, since the statute dealt with a more specific class than did former Code 1933, § 61-603 (see O.C.G.A. § 44-7-32), and predated that Code section, was controlling as to that class or, in other words, brokers. 1976 Op. Att'y Gen. No. 76-101.

Escrow accounts of real estate brokers are not subject to attachment in cases in which broker is defendant inasmuch as money in such accounts is not property of broker nor does it constitute a debt free from contingencies. 1972 Op. Att'y Gen. No. 72-1.

RESEARCH REFERENCES

ALR. — Right of real estate broker to commissions under a contract providing for payment of commissions out of purchase price, 20 ALR 289.

Licensed real-estate broker's right to

compensation as affected by lack of license on the part of partners, coadventurers, employees, or other associates, 8 ALR3d 523.

43-40-21. Violations involving real estate accounts; report to Attorney General; injunctions; appointment of receiver.

Whenever it shall appear to the commission from any examination or report provided by the laws of this state that a broker has failed to comply with Code Section 43-40-20 or if any broker or the officers, members, or partners of any firm licensed as a real estate broker shall refuse to submit their books, papers, and affairs to the inspection of any examiner, the commission shall have reason to conclude that the trust account of such broker is in an unsafe or unsound condition; and the commission shall immediately submit a complete report of all information available to it to the Attorney General. An action may be brought by this state to enjoin such broker from engaging in or continuing such violation or doing any act or acts in furtherance thereof. In any such action, an order or judgment may be entered awarding such preliminary or final injunctions as may be deemed proper. In addition to all

other means provided by law for the enforcement of a restraining order or injunction, the court in which such action is brought shall have power and jurisdiction to impound and appoint a receiver for the property and business of the defendant, including books, papers, documents, and records pertaining thereto, or as much thereof as the court may deem reasonably necessary to prevent violations of the law or injury to the public through, or by means of, the use of such property and business. Such receiver, when so appointed and qualified, shall have such powers and duties as to custody, collection, administration, winding up, and liquidation of such property and business as shall, from time to time, be conferred upon such receiver by the court. (Code 1933, § 84-1424, enacted by Ga. L. 1958, p. 334, § 1; Code 1933, § 84-1420, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 2000, p. 1527, § 19.)

JUDICIAL DECISIONS

Escrow money not garnishable for broker's debts. — Moneys belonging to others held in escrow by real estate brokers according to former Code 1933, §§ 84-1419 and 84-1420 (see O.C.G.A. §§ 43-40-20 and 43-40-21) were not subject to garnishment for the broker's personal debts. *Citizens & S. Nat'l Bank v. AVCO Fin. Servs., Inc.*, 129 Ga. App. 605, 200 S.E.2d 309 (1973).

43-40-22. Real estate education, research, and recovery fund; revocation of license upon court order for payment from fund; subrogation.

(a) The commission is authorized and directed to establish and maintain a real estate education, research, and recovery fund. All funds in the real estate recovery fund established by Ga. L. 1973, p. 100, shall be transferred to and utilized through the real estate education, research, and recovery fund.

(b) The commission shall maintain a minimum balance of \$1 million in the real estate education, research, and recovery fund from which any person, except bonding companies when they are not principals in a real estate transaction, aggrieved by an act, representation, transaction, or conduct of a licensee which is in violation of this chapter or of the rules and regulations of the commission promulgated pursuant thereto, may recover, by order of any court having competent jurisdiction, actual or compensatory damages, not including interests and costs sustained by the act, representation, transaction, or conduct, provided that nothing shall be construed to obligate the fund for more than \$15,000.00 per transaction regardless of the number of persons aggrieved or parcels of real estate involved in such transaction. In addition:

(1) The liability of the fund for the acts of a licensee, when acting as such, is terminated upon the issuance of court orders authorizing

payments from the fund for judgments, or any unsatisfied portion of judgments, in an aggregate amount of \$45,000.00 on behalf of such licensee;

(2) A licensee acting as a principal or agent in a real estate transaction has no claim against the fund; and

(3) No person who establishes a proper claim or claims under this Code section shall ever obtain more than \$15,000.00 from the fund.

(c) When any person makes application for an original license to practice as a licensee, that person shall pay, in addition to the original license fee, a fee in an amount established by the commission for deposit in the education, research, and recovery fund.

(d)(1) No action for a judgment which subsequently results in an order for collection from the real estate education, research, and recovery fund shall be started later than two years from the accrual of the cause of action thereon. When any aggrieved person commences action for a judgment which may result in collection from the real estate education, research, and recovery fund, the aggrieved person shall notify the commission in writing, by certified mail or statutory overnight delivery, return receipt requested, to this effect at the time of the commencement of such action. The commission shall have the right to intervene in and defend any such action.

(2) When any aggrieved person recovers a valid judgment in any court of competent jurisdiction against any licensee for any act, representation, transaction, or conduct which is in violation of this chapter, or of the regulations promulgated pursuant thereto, which act occurred on or after July 1, 1973, the aggrieved person may, upon termination of all proceedings, including reviews and appeals in connection with the judgment, file a verified claim in the court in which the judgment was entered and, upon ten days' written notice to the commission, may apply to the court for an order directing payment out of the real estate education, research, and recovery fund of the amount unpaid upon the judgment, subject to the limitations stated in this Code section.

(3) The court shall proceed upon such application in a summary manner and, upon the hearing thereof, the aggrieved person shall be required to show that such person:

(A) At the time of the cause of action, was not a spouse of the judgment debtor; or a parent, sibling, or child of the judgment debtor or the judgment debtor's spouse; or the personal representative of such person or persons;

(B) Has complied with all the requirements of this Code section;

(C) Has obtained a judgment, as set out in paragraph (2) of this subsection, stating the amount thereof and the amount owing thereon at the date of the application; and that, in such action, the aggrieved person had joined any and all bonding companies which issued corporate surety bonds to the judgment debtors as principals and all other necessary parties;

(D) Has caused to be issued a writ of execution upon such judgment and the officer executing the same has made a return showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment could be found or that the amount realized on the sale of them or of such of them as were found, under such execution, was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due to the judgment after application thereon of the amount realized;

(E) Has caused the judgment debtor to make discovery under oath concerning the judgment debtor's property, in accordance with Chapter 11 of Title 9, the "Georgia Civil Practice Act";

(F) Has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment;

(G) Has discovered by such search no personal or real property or other assets liable to be sold or applied or that certain of them, being described, owned by the judgment debtor and liable to be so applied have been discovered and that the aggrieved person has taken all necessary action and proceedings for the realization thereof and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized; and

(H) Has applied the following items, if any, as recovered by the aggrieved person, to the actual or compensatory damages awarded by the court:

(i) Any amount recovered from the judgment debtor or debtors;

(ii) Any amount recovered from the bonding company or companies; or

(iii) Any amount recovered in out-of-court settlements as to particular defendants.

(4) Whenever the aggrieved person satisfies the court that it is not practical to comply with one or more of the requirements enumerated

in subparagraphs (D), (E), (F), (G), and (H) of paragraph (3) of this subsection and that the aggrieved person has taken all reasonable steps to collect the amount of the judgment or the unsatisfied part thereof and has been unable to collect the same, the court may, in its discretion, dispense with the necessity for complying with such requirements.

(5) The court shall make an order directed to the commission requiring payment from the real estate education, research, and recovery fund of whatever sum it shall find to be payable upon the claim, pursuant to the provisions of and in accordance with the limitations contained in this Code section, if the court is satisfied, upon the hearing, of the truth of all matters required to be shown by the aggrieved person by paragraph (3) of this subsection and is satisfied that the aggrieved person has fully pursued and exhausted all remedies available to him for recovering the amount awarded by the judgment of the court.

(6) Should the commission pay from the real estate education, research, and recovery fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensee, the license of such licensee shall be automatically revoked upon the issuance of a court order authorizing payment from the real estate education, research, and recovery fund. If such license is that of a firm, the license of the qualifying broker of the firm shall automatically be revoked upon the issuance of a court order authorizing payment from the real estate education, research, and recovery fund. No such licensee shall be eligible to receive a new license until such licensee has repaid in full, plus interest at the judgment rate in accordance with Code Section 7-4-12, the amount paid from the real estate education, research, and recovery fund on such licensee's account. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this subsection.

(7) If, at any time, the money deposited in the real estate education, research, and recovery fund is insufficient to satisfy any duly authorized claim or portion thereof, the commission shall, when sufficient money has been deposited in the real estate education, research, and recovery fund, satisfy such unpaid claims or portions thereof in the order that such claims or portions thereof were originally filed, plus accumulated interest at the rate of 4 percent a year.

(e) The sums received by the commission pursuant to any provisions of this Code section shall be deposited into the state treasury and held in a special fund to be known as the "Real Estate Education, Research, and Recovery Fund" and shall be held by the commission in trust for carrying out the purposes of this Code section. These funds may be

invested in any investments which are legal for domestic insurance companies under Articles 1 and 3 of Chapter 11 of Title 33, and the interest from these investments shall be deposited to the credit of the real estate education, research, and recovery fund and shall be available for the same purposes as all other money deposited in the real estate education, research, and recovery fund.

(f) It shall be unlawful for any person or his agent to file with the commission any notice, statement, or other document required under this Code section which is false, untrue, or contains any material misstatement of fact and shall constitute a misdemeanor.

(g) When the commission receives notice, as provided in subsection (d) of this Code section, the commission may enter an appearance, file an answer, appear at the court hearing, defend the action, or take whatever other action it may deem appropriate on behalf and in the name of the defendant and take recourse through any appropriate method of review on behalf of and in the name of the defendant.

(h) When, upon the order of the court, the commission has paid from the real estate education, research, and recovery fund any sum to the judgment creditor, the commission shall be subrogated to all of the rights of the judgment creditor. The judgment creditor shall assign all his right, title, and interest in the judgment to the commission before any payment is made from the fund, and any amount and interest so recovered by the commission on the judgment shall be deposited to the fund. If the total amount collected on the judgment by the commission exceeds the amount paid from the fund to the original judgment creditor plus interest and the cost of collection, the commission may elect to pay any overage collected to the original judgment creditor or reassign the remaining interest in the judgment to the original judgment creditor. The payment or reassignment to the original judgment creditor shall not subject the fund to further liability for payment to the original judgment creditor based on that transaction or judgment. Any costs incurred by the commission attempting to collect assigned judgments shall be paid from the fund.

(i) The failure of an aggrieved person to comply with all of the provisions of this Code section shall constitute a waiver of any rights under this Code section.

(j) The commission, in its discretion, may use any and all funds from new licensee payments to the real estate education, research, and recovery fund or from accrued interest earned on the fund for the purpose of helping to underwrite the cost of developing courses, conducting seminars, conducting research projects on matters affecting real estate brokerage, publishing and distributing educational materials, or other education and research programs for the benefit of

licensees and the public as the commission may approve in accordance with the provisions of this chapter and its rules and regulations; provided, however, that the commission shall not expend or commit sums for educational or research purposes in such amounts as would cause the real estate education, research, and recovery fund to be reduced to an amount less than \$1 million.

(k) In addition to the license fees provided for in this chapter, the commission, in its discretion and based upon the need to ensure that a minimum balance of \$1 million is maintained in the real estate education, research, and recovery fund, may assess each licensee, only upon renewal of the license, an amount not to exceed \$30.00 per year. (Code 1933, § 84-1424, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 1979, p. 1203, § 4; Ga. L. 1981, p. 1311, § 7; Ga. L. 1982, p. 1001, §§ 8, 15; Ga. L. 1985, p. 360, §§ 11-13; Ga. L. 1986, p. 10, § 43; Ga. L. 1988, p. 1395, § 1; Ga. L. 1989, p. 1619, § 7; Ga. L. 1993, p. 123, § 57; Ga. L. 1999, p. 592, § 18; Ga. L. 2000, p. 1527, § 20; Ga. L. 2000, p. 1589, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, “subparagraphs (D), (E), (F), (G), and (H) of paragraph (3)” was substituted for “subparagraphs (3)(D), (3)(E), (3)(F), (3)(G), and (3)(H)” in paragraph (d)(4) and “under this Code section” was substituted for “hereunder” in subsection (i).

Editor’s notes. — Ga. L. 2000, p. 1589,

§ 16, not codified by the General Assembly, provides that the amendment to paragraph (d)(1) is applicable with respect to notices delivered on or after July 1, 2000.

Law reviews. — For article, “The Georgia Real Estate Education, Research, and Recovery Fund: An Elusive Pot of Gold at the End of the Rainbow,” see 24 Ga. St. B.J. 86 (1987).

JUDICIAL DECISIONS

Purpose of recovery fund provisions. — O.C.G.A. § 43-40-22(a) is intended to ensure payment to a successful plaintiff against a defendant who might otherwise be judgment proof. *Campagna v. Sara Hudson Realty Co.*, 137 Ga. App. 451, 224 S.E.2d 102 (1976).

Commission given adequate notice of suit. — When the plaintiff filed suit against an incorporated realtor for return of earnest money paid, and subsequently filed a separate action against the broker

individually, and notified the Real Estate Commission only at the time the second action was filed, the commission was given notice as required by O.C.G.A. § 43-40-22(d)(1). *Residential Dev., Inc. v. Massicott*, 260 Ga. 319, 392 S.E.2d 706 (1990).

Cited in *Citizens & S. Nat’l Bank v. AVCO Fin. Servs., Inc.*, 129 Ga. App. 605, 200 S.E.2d 309 (1973); *Morris v. Atlanta Legal Aid Soc’y, Inc.*, 222 Ga. App. 62, 473 S.E.2d 501 (1996).

RESEARCH REFERENCES

ALR. — Right of principal to recover punitive damages for agent’s or broker’s breach of duty, 67 ALR2d 952.

43-40-22.1. Fidelity bond or insurance requirements for broker providing community management services.

(a) The commission may require that each broker who provides community association management services under this chapter and who collects, controls, has access to, or disburses community association funds shall at all times provide or be covered by a fidelity bond or fidelity insurance coverage protecting the community associations being managed by the broker against loss of any funds belonging to those community associations being held or controlled by the broker.

(b) The commission shall establish through its rules and regulations the criteria that such fidelity bonds or fidelity insurance, if required, must meet.

(c) Each broker providing community association management services shall maintain a copy of any mandatory fidelity bond or fidelity insurance policy and a current certificate of each such bond or insurance policy showing current coverage, shall provide a copy thereof to the community association, and shall produce a copy thereof at the reasonable request of the commission or any of its agents for their inspection. (Code 1981, § 43-40-22.1, enacted by Ga. L. 1996, p. 194, § 11.)

43-40-23. Applicability of county or municipal license, occupational, or professional taxes.

No county or municipal corporation shall levy or collect any fixed amount license, occupational, or professional tax upon real estate brokers, except as provided for in Code Section 48-13-17. (Code 1981, § 43-40-23, enacted by Ga. L. 1993, p. 1292, § 2.)

43-40-24. Requisites for maintenance of action under chapter.

(a) No person shall bring or maintain any action in the courts of this state for the collection of compensation for the performance of any of the acts mentioned in this chapter without alleging and proving that he was a licensed broker in Georgia at the time the alleged cause of action arose.

(b) No broker shall bring or maintain any action in the courts of this state for the collection of compensation for the performance of any of the acts mentioned in this chapter without alleging and proving that any person acting in the broker's behalf was duly licensed in Georgia at the time the alleged cause of action arose.

(c) No broker shall bring or maintain any action against another broker nor shall any affiliated licensee bring or maintain any action

against the broker holding his or her license for the collection of compensation under this chapter without alleging and proving that he or she was a licensee in Georgia at the time the alleged cause of action arose.

(d) The commission by and through its commissioner may bring an action for any violation of this chapter. (Code 1933, § 84-1404, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 1982, p. 3, § 43; Ga. L. 1982, p. 1001, §§ 1, 16; Ga. L. 1983, p. 1411, § 4; Ga. L. 1985, p. 360, § 14; Ga. L. 1987, p. 252, § 6.)

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

LICENSURE REQUIREMENTS IN ACTIONS FOR COMPENSATION

LICENSURE REQUIREMENTS FOR NONRESIDENTS

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Civil Code 1910, § 1896, and former Code 1933, §§ 84-1410 and 84-1413, as they read prior to the revision of the chapter by Ga. L. 1973, p. 100, are included in the annotations for this Code section.

Legislative intent to prevent illegal contract actions. — Principal purpose of the legislature in enacting these provisions was to prohibit the use of the courts for the purpose of enforcing an illegal contract, whether it knew that such was already the law or not. *Drake v. Parkman*, 79 Ga. App. 679, 54 S.E.2d 714 (1949) (decided under former Code 1933, § 84-1413).

Because Georgia's statutory scheme regulating brokers was enacted pursuant to the state's police power to protect the public interest, an agreement to pay a brokerage fee, entered into with an unlicensed broker, is void and unenforceable. *Amend v. 485 Props., LLC*, 401 F.3d 1255 (11th Cir. 2005).

Application applies only to realtors, not insurance agents. — Rule that a real estate broker must allege in an action brought to recover commissions that the broker is licensed to pursue that vocation is prescribed by statute and is applicable only to actions instituted by real estate brokers. No statute requires an

insurance agent suing for premiums on a policy furnished to the broker's customers to allege either that the broker is a licensed insurance agent or that the insurance company from which the policy is procured is qualified to carry on business in this state. *Gilder v. Moore*, 93 Ga. App. 448, 91 S.E.2d 834 (1956) (decided under former Code 1933, § 84-1413).

When broker entitled to commission. — Real estate broker is entitled to the broker's commission if the broker either effects the sale or was the procuring cause which culminated in the sale. *Newman v. James M. Vardaman & Co.*, 162 Ga. App. 878, 293 S.E.2d 462 (1982).

Whether or not the plaintiff is in compliance with O.C.G.A. §§ 43-40-11 and 43-40-18 has no bearing on the plaintiff's ability to collect a commission under O.C.G.A. § 43-40-24. *Newman v. James M. Vardaman & Co.*, 162 Ga. App. 878, 293 S.E.2d 462 (1982).

Question of fact. — Whether or not real estate broker was procuring cause of ultimate sale is a question of fact for the jury. *Newman v. James M. Vardaman & Co.*, 162 Ga. App. 878, 293 S.E.2d 462 (1982).

What broker must prove to show broker caused sale. — In determining whether or not a real estate broker is procuring cause of sale when there is no exclusive contract to sell, the broker must show and prove that there were negotia-

General Consideration (Cont'd)

tions still pending between the broker and prospective purchaser and that the owner was aware that negotiations were still pending at the time the broker consummated the sale. *Gibbs v. Nixon*, 154 Ga. App. 463, 268 S.E.2d 670 (1980).

Final act of closing sale is not necessarily condition precedent to broker's right to commission as when the broker has secured a binding contract of sale. *Northside Realty Assocs. v. MPI Corp.*, 245 Ga. 321, 265 S.E.2d 11 (1980).

Significant time was that point in time when the alleged cause of action arose. *Bryan v. Brown Childs Realty Co.*, 252 Ga. App. 502, 556 S.E.2d 554 (2001).

Section 43-40-24 does not involve actions against broker. — In enacting former Code 1933, § 84-1413, the legislature was legislating concerning affirmative efforts of a broker or salesman to recover, and did not intend to deal expressly or impliedly with rights of other party dealing with broker or salesman to recover moneys paid or to deal with broker's or salesman's defensive rights in action against the other party. *Drake v. Parkman*, 79 Ga. App. 679, 54 S.E.2d 714 (1949) (decided under former Code 1933, § 84-1413).

Former Code 1933, § 84-1413 applied even if claim is on quantum meruit basis. *Dixon v. Rollins*, 120 Ga. App. 557, 171 S.E.2d 646 (1969) (decided under former Code 1933, § 84-1413). But see *Stokes & Co. v. McCoy*, 212 Ga. 78, 90 S.E.2d 404 (1955).

Cited in *Citizens & S. Nat'l Bank v. AVCO Fin. Servs., Inc.*, 129 Ga. App. 605, 200 S.E.2d 309 (1973); *Killingsworth v. French & Whitten Realtors*, 148 Ga. App. 29, 251 S.E.2d 40 (1978); *Berchenko v. Fulton Fed. Sav. & Loan Ass'n*, 149 Ga. App. 526, 254 S.E.2d 745 (1979); *Chase & Taylor, Inc. v. Milam*, 179 Ga. App. 844, 348 S.E.2d 74 (1986); *Unifund Gen., Inc. v. Orr*, 191 Ga. App. 836, 383 S.E.2d 199 (1989).

Licensure Requirements in Actions for Compensation

No unlicensed person shall maintain action for compensation for per-

forming any acts mentioned in statute. *Krizan v. Newman & Co.*, 246 Ga. 214, 271 S.E.2d 135 (1980); *Johnson v. Oriental Weavers Rug Mfg. Co.*, 241 Ga. App. 15, 525 S.E.2d 738 (1999).

Party not licensed as a real estate broker but only authorized as a real estate agent could not bring an action for a real estate sales commission and tortious interference with business relations. *Atlanta Apt. Inv., Inc. v. N.Y. Life Ins. Co.*, 220 Ga. App. 595, 469 S.E.2d 831 (1996).

Section 43-40-24 inapplicable to suit for collection of promissory note.

— If a person who has acted as a real estate broker or salesperson wishes to bring suit to enforce rights under brokerage or salesperson's contract, then the broker or salesperson must comply with requirement of this section; but if contract being sued upon is a promissory note and not the brokerage or salesperson's contract, the suit is not one for collection of compensation for performance of any acts mentioned in statute, but is a suit to enforce obligations of the note and is governed by provisions of the Uniform Commercial Code. *Azar-Beard & Assocs. v. Wallace*, 146 Ga. App. 671, 247 S.E.2d 154 (1978) (see O.C.G.A. § 43-40-24).

Failure to allege license now not fatal to cause of action. — While prior to the adoption of the Civil Practice Act (see O.C.G.A. T. 9) failure to allege as required by Ga. L. 1973, p. 100, § 1 (see O.C.G.A. § 43-40-24(a)) was fatal, this is no longer the case. *Brown v. Jackson*, 142 Ga. App. 780, 237 S.E.2d 13 (1977).

Salesperson must prove license to win commission action. — In real estate salesperson's action to recover commissions, it is a condition precedent to recovery that the plaintiff prove possession of necessary license, and failure to do so requires grant of new trial. *Beets v. Padgett*, 123 Ga. App. 68, 179 S.E.2d 560 (1970) (decided under former Code 1933, § 84-1410).

Time of proof of license. — Civil Practice Act, O.C.G.A. Ch. 11, T. 9, does not require a person suing on a contract permitted to be entered only by licensed persons to plead the existence of such a license in order to state a claim, but, at

whatever stage of the proceedings it appears that the plaintiff is seeking to recover upon a contract permitted to be entered into only by persons holding licenses issued as a regulatory measure, it becomes imperative for the plaintiff to prove possession of such a license and that the plaintiff held such license at the time the contract was entered into in order to authorize a recovery. *Myers v. Wynn*, 201 Ga. App. 764, 412 S.E.2d 581 (1991).

Because the broker's license was returned to active status prior to the arising of the cause of action for a commission, O.C.G.A. § 43-40-24(b) did not bar the claim. *Bryan v. Brown Childs Realty Co.*, 236 Ga. App. 739, 513 S.E.2d 271 (1999).

Evidence of license. — When a regulated business is required to prove that the business is licensed in order to maintain an action for debt, the best evidence rule does not require that the actual licensing document be entered into evidence, and the testimony of an agent of the company is sufficient proof of licensing. *Archer Motor Co. v. International Bus. Inv., Inc.*, 193 Ga. App. 86, 386 S.E.2d 918 (1989).

In an action in which a real estate firm was the plaintiff against the defendants, buyers and sellers, for, inter alia, conspiring to deprive the real estate firm of a commission on the sale of the sellers' home, the requirements of O.C.G.A. § 43-40-24 were satisfied by evidence that the firm's main owner was a licensed broker and that the realtor, who was one of the listing agents for the sellers during the relevant time period, was a licensed real estate agent. *Ansari v. Frolick & Assocs.*, 255 Ga. App. 448, 565 S.E.2d 600 (2002).

Contracts made without having obtained a license are illegal and void and there can be no recovery for services rendered. *Drake v. Parkman*, 79 Ga. App. 679, 54 S.E.2d 714 (1949) (decided under former Code 1933, § 84-1410).

Contract between an unlicensed real estate broker and an owner of property whereby the broker agrees to sell the property is void and unenforceable, and any action brought by the broker whether for commissions earned or for breach of

contract would necessarily fail. *Drake v. Parkman*, 79 Ga. App. 679, 54 S.E.2d 714 (1949); *Mayo v. Lynes*, 80 Ga. App. 4, 55 S.E.2d 174 (1949) (decided under former Code 1933, § 84-1413).

Public policy under O.C.G.A. § 43-40-24 precluded the president of a leasing agent from enforcing a fee agreement in a breach of contract action against a property company because the leasing agent was not a licensed broker; the agreement could not be severed or saved when the agreement consisted of a single, indivisible promise by the leasing agent or the agent's affiliates to secure the agent's client as a tenant for the property company. *Amend v. 485 Props., LLC*, 401 F.3d 1255 (11th Cir. 2005).

Licensing requirements apply to person acting as agent for another in a single real estate transaction. *Dixon v. Rollins*, 120 Ga. App. 557, 171 S.E.2d 646 (1969) (decided under former Code 1933, § 84-1413).

Licensing requirements applicable. — If a person instituted an action for purpose of recovering a sum of money alleged to have been earned by that person, as agent of another, in buying real estate for a principal, that person could not recover if, in acting as such agent, the person was a real estate broker who had not obtained a license to act as such. *Hazlehurst v. Southern Fruit Distribs., Inc.*, 46 Ga. App. 453, 167 S.E. 898 (1933) (decided under former Civil Code 1910, § 1896).

Licensure Requirements for Nonresidents

Suit by unlicensed nonresident barred only if services performed here. — Georgia licensure statute does not require a real estate broker who is licensed by and performs a brokerage contract in another state to be licensed here, but requires the broker to be licensed only in cases where the broker performs services under contract within any county in this state. *Krizan v. Newman & Co.*, 153 Ga. App. 337, 265 S.E.2d 68, aff'd, 246 Ga. 214, 271 S.E.2d 135 (1980); *Keenan Co. v. Pamlico, Inc.*, 245 Ga. 842, 268 S.E.2d 334 (1980).

Licensure Requirements for Nonresidents (Cont'd)

When closing is essential to recovery and occurs in Georgia, provisions apply. — In suit brought by Iowa realtor to recover a fee under letter agreement and otherwise because a sale was consummated and closed with one of the realtor's clients, when closing was an act essential to recovery and the closing occurred in Georgia, provisions of former Code 1933, § 84-1402 (see O.C.G.A. Ch. 40, T. 43) were applicable. *Krizan v. Newman & Co.*, 246 Ga. 214, 271 S.E.2d 135 (1980).

Real estate broker licensed only in California was barred from maintaining action for collection of real estate commission arising out of sale of land located in this state, closing for which occurred in this state, when by broker's own admission the agreement involved was not merely a referral arrangement but encompassed that person acting as a real estate broker in this state. *Wanamaker v. Esther Wynne Realty*

Assocs., 163 Ga. App. 338, 294 S.E.2d 581 (1982).

If all acts essential to recovery occur out of state. — Prohibition of this section bars suit only if services performed by the plaintiff, which entitle the plaintiff to a commission, were performed within the State of Georgia. If all acts essential to recovery of a commission are performed outside of this state, the statute has no applicability. *Krizan v. Newman & Co.*, 246 Ga. 214, 271 S.E.2d 135 (1980) (see O.C.G.A. § 43-40-24).

When sole contacts with state were in furtherance of isolated interstate sales transaction, this section was inapplicable. *Keenan Co. v. Pamlico, Inc.*, 245 Ga. 842, 268 S.E.2d 334 (1980) (see O.C.G.A. § 43-40-24).

Broker doing business in Georgia without required license has no standing to sue for brokers' commissions. *Mathews v. Greiner*, 130 Ga. App. 817, 204 S.E.2d 749 (1974) (decided under former Code 1933, § 84-1413).

RESEARCH REFERENCES

ALR. — Procurement of real-estate broker's license subsequent to execution of contract for services as entitling broker to compensation for services, 80 ALR3d 318.

Necessity of having real-estate broker's license in order to recover commission as affected by fact that business sold includes real property, 82 ALR3d 1139.

43-40-25. Violations by licensees, schools, and instructors; sanctions; unfair trade practices.

(a) In accordance with the hearing procedures established for contested cases by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," whenever a license, a school approval, or an instructor approval has been obtained by false or fraudulent representation; or whenever a licensee, an approved school, or an approved instructor has been found guilty of a violation of this chapter, or of the rules and regulations promulgated by the commission, or of any unfair trade practices, including, but not limited to those listed in this Code section; the commission shall have the power to take any one or more of the following actions:

- (1) Refuse to grant or renew a license to an applicant;
- (2) Administer a reprimand;

(3) Suspend any license or approval for a definite period of time or for an indefinite period of time in connection with any condition that may be attached to the restoration of the license or approval;

(4) Revoke any license or approval;

(5) Revoke the license of a broker, qualifying broker, or associate broker and simultaneously issue such licensee a salesperson's license;

(6) Impose on a licensee, applicant, school approval, or instructor approval monetary assessments in an amount necessary to reimburse the commission for the administrative, investigative, and legal costs and expenses incurred by the commission in conducting any proceeding authorized under this chapter or Chapter 13 of Title 50, the "Georgia Administrative Procedure Act";

(7) Impose a fine not to exceed \$1,000.00 for each violation of this chapter or its rules and regulations with fines for multiple violations limited to \$5,000.00 in any one disciplinary proceeding or such other amount as the parties may agree;

(8) Require completion of a course of study in real estate brokerage or instruction;

(9) Require the filing of periodic reports by an independent accountant on a real estate broker's designated trust account; or

(10) Limit or restrict any license or approval as the commission deems necessary for the protection of the public.

(b) Licensees shall not engage in any of the following unfair trade practices:

(1) Because of race, color, religion, sex, disability, familial status, or national origin:

(A) Refusing to sell or rent after the making of a bona fide offer, or refusing to negotiate for the sale or rental of, or otherwise making unavailable or denying, real estate to any person;

(B) Discriminating against any person in the terms, conditions, or privileges of sale or rental of real estate or in the provision of services or facilities in connection therewith;

(C) Making, printing, or publishing or causing to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of real estate, that indicates any preference, limitation, or discrimination or an intention to make any such preference, limitation, or discrimination;

(D) Representing to any person that any real estate is not available for inspection, sale, or rental when such real estate is in fact so available; or

- (E) Representing explicitly or implicitly that a change has or will or may occur in a block, neighborhood, or area in order to induce or discourage the listing, purchasing, selling, or renting of real estate;
- (2) Intentionally advertising material which is misleading or inaccurate or which in any way misrepresents any property, terms, values, policies, or services of the business conducted;
- (3) Failing to account for and remit any money coming into the licensee's possession which belongs to others;
- (4) Commingling the money or other property of the licensee's principals with the licensee's own;
- (5) Failing to maintain and deposit in a separate, federally insured checking account all money received by said broker acting in said capacity, or as escrow agent or the temporary custodian of the funds of others, in a real estate transaction unless all parties having an interest in said funds have agreed otherwise in writing;
- (6) Failing to disclose in writing to a principal in a real estate transaction any of the following:
- (A) The receipt of a fee, rebate, or other thing of value on expenditures made on behalf of the principal for which the principal is reimbursing the licensee;
 - (B) The payment to another broker of a commission, fee, or other thing of value for the referral of the principal for brokerage or relocation services; or
 - (C) The receipt of anything of value for the referral of any service or product in a real estate transaction to a principal;
- (7) Representing or attempting to represent a real estate broker, other than the broker holding the licensee's license, without the express knowledge and consent of the broker holding the licensee's license;
- (8) Accepting a commission or other valuable consideration by a licensee from anyone other than the broker holding that licensee's license without the consent of that broker;
- (9) Acting in the dual capacity of agent and undisclosed principal in any transaction;
- (10) Guaranteeing or authorizing any person to guarantee future profits which may result from the resale of real property;
- (11) Placing a sign on any property offering it for sale or rent without the written consent of the owner or the owner's authorized

agent and failing to remove such sign within ten days after the expiration of listing;

(12) Offering real estate for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent;

(13) Inducing any party to a contract of sale or lease, or a brokerage agreement to break such contract or brokerage agreement for the purpose of substituting in lieu thereof any other contract or brokerage agreement with another principal;

(14) Negotiating a sale, exchange, or lease of real estate directly with an owner, a lessor, a purchaser, or a tenant if the licensee knows that such owner or lessor has a written outstanding listing contract in connection with such property granting an exclusive agency or an exclusive right to sell to another broker or that such purchaser or tenant has a written outstanding exclusive brokerage agreement with another broker, unless the outstanding listing or brokerage agreement provides that the licensee holding such agreement will not provide negotiation services to the client;

(15) Indicating that an opinion given to a potential seller, purchaser, landlord, or tenant regarding a listing, lease, rental, or purchase price is an appraisal unless such licensee holds an appraiser classification in accordance with Chapter 39A of this title;

(16) Performing or attempting to perform any of the acts of a licensee on property located in another state without first having been properly licensed in that state or otherwise having complied fully with that state's laws regarding real estate brokerage;

(17) Paying a commission or compensation to any person for performing the services of a real estate licensee who has not first secured the appropriate license under this chapter or is not cooperating as a nonresident who is licensed in such nonresident's state or foreign country of residence, provided that nothing contained in this subsection or any other provision of this Code section shall be construed so as to prohibit the payment of earned commissions:

(A) To the estate or heirs of a deceased real estate licensee when such deceased real estate licensee had a valid Georgia real estate license in effect at the time the commission was earned and at the time of such person's death;

(B) To a citizen of another country acting as a referral agent if that country does not license real estate brokers and if the Georgia licensee paying such commission or compensation obtains and maintains reasonable written evidence that the payee is a citizen of

said other country, is not a resident of this country, and is in the business of brokering real estate in said other country; or

(C) By the brokerage firm holding a licensee's license to an unlicensed firm in which an individual licensee affiliated with the brokerage firm owns more than a 20 percent interest provided:

(i) Such individual licensee earned the commission on behalf of the brokerage firm;

(ii) Such unlicensed firm does not perform real estate brokerage activity;

(iii) The affiliated licensee and the brokerage firm have a written agreement authorizing the payment to the unlicensed firm; and

(iv) The brokerage firm obtains and retains written evidence that the affiliated licensee owns more than a 20 percent interest in the unlicensed firm to which the compensation will be paid;

(18) Failing to include a fixed date of expiration in any written listing agreement and failing to leave a copy of said agreement with the principal;

(19) Failing to deliver, within a reasonable time, a completed copy of any purchase agreement or offer to buy or sell real estate to the purchaser and to the seller;

(20) Failure by a broker to deliver to the seller in every real estate transaction, at the time said transaction is consummated, a complete, detailed closing statement showing all of the receipts and disbursements handled by such broker for the seller or failure to deliver to the buyer a complete statement showing all money received in said transaction from such buyer and how and for what the same was disbursed; the broker shall retain true copies of such statements in the broker's files;

(21) Making any substantial misrepresentations;

(22) Acting for more than one party in a transaction without the express written consent of all parties to the transaction;

(23) Failure of an associate broker, salesperson, or community association manager to place, as soon after receipt as is practicably possible, in the custody of the broker holding the licensee's license any deposit money or other money or funds entrusted to the licensee by any person dealing with the licensee as the representative of the licensee's licensed broker;

(24) Filing a listing contract or any document or instrument purporting to create a lien based on a listing contract for the purpose

of casting a cloud upon the title to real estate when no valid claim under said listing contract exists;

(25) Having demonstrated incompetency to act as a real estate licensee in such manner as to safeguard the interest of the public or any other conduct whether of the same or a different character than heretofore specified which constitutes dishonest dealing;

(26) Obtaining a brokerage agreement, a sales contract, or a lease from any owner, purchaser, or tenant while knowing or having reason to believe that another broker has an exclusive brokerage agreement with such owner, purchaser, or tenant, unless the licensee has written permission from the broker having the first exclusive brokerage agreement; provided, however, that notwithstanding the provisions of this paragraph, a licensee shall be permitted to present a proposal or bid for community association management if requested to do so in writing from a community association board of directors;

(27) Failing to keep for a period of three years a true and correct copy of all sales contracts, closing statements, any offer or other document that resulted in the depositing of trust funds, accounting records related to the maintenance of any trust account required by this chapter, and other documents relating to real estate closings or transactions or failing to produce such documents at the reasonable request of the commission or any of its agents for their inspection;

(28) Being or becoming a party to any falsification of any portion of any contract or other document involved in any real estate transaction;

(29) Failing to obtain the written agreement of the parties indicating to whom the broker shall pay any interest earned on trust funds deposited into an interest-bearing checking account prior to depositing those funds into such account;

(30) Failing to disclose in a timely manner to all parties in a real estate transaction any agency relationship that the licensee may have with any of the parties;

(31) Attempting to perform any act authorized by this chapter to be performed only by a broker, associate broker, or salesperson while licensed as a community association manager;

(32) Attempting to sell, lease, or exchange the property of any member of a community association to which a licensee is providing community association management services without the express written consent of that association to do so;

(33) Failure to deliver to a community association terminating a management contract within 30 days of the termination, or within such other time period as the management contract shall provide:

(A) A complete and accurate record of all transactions and funds handled during the period of the contract and not previously accounted for;

(B) All records and documents received from the community association or received on the association's behalf; and

(C) Any funds held on behalf of the community association;

(34) Failure to deliver to a property owner terminating a management contract within 30 days of the termination, or within such other time period as the management contract shall provide:

(A) A complete and accurate record of all transactions and funds handled during the period of the contract and not previously accounted for;

(B) All records and documents received from the property owner or received on the owner's behalf; and

(C) Any funds held on behalf of the property owner;

(35) Inducing any person to alter, modify, or change another licensee's fee or commission for real estate brokerage services without that licensee's prior written consent; or

(36) Failing to obtain a person's written agreement to refer that person to another licensed broker for brokerage or relocation services and to inform such person being referred whether or not the licensee will receive a valuable consideration for such referral.

(c) When a licensee has previously been sanctioned by the commission or by any other state's real estate brokerage licensing authority, the commission may consider any such prior sanctions in determining the severity of a new sanction which may be imposed upon a finding that the licensee has committed an unfair trade practice, that the licensee has violated any provision of this chapter, or that the licensee has violated any of the rules and regulations of the commission. The failure of a licensee to comply with or to obey a final order of the commission may be cause for suspension or revocation of the individual's license after opportunity for a hearing.

(d) Whenever a licensee acts in a real estate transaction as a principal or as an officer, employee, or member of a firm or any other entity acting as a principal, the commission may impose any sanction permitted by this chapter if the licensee commits any unfair trade practice enumerated in this Code section or violates any other provision of this chapter or any rules and regulations adopted pursuant to this chapter in such a transaction.

(e) Whenever a community association manager, a salesperson, or an associate broker violates any provision of this chapter or any rules and

regulations adopted pursuant to this chapter by performing any duty or act of a broker enumerated in this chapter or any rules and regulations adopted pursuant to this chapter either with the proper delegation of that duty or act by the broker or without the broker's authorization, the commission may impose any sanction permitted under this chapter on the license of such community association manager, salesperson, or associate broker. (Ga. L. 1925, p. 325, §§ 11, 12; Ga. L. 1929, p. 316, § 32; Code 1933, §§ 84-1417, 84-1418; Ga. L. 1949, p. 943, § 4; Ga. L. 1965, p. 629, § 9; Code 1933, § 84-1421, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 1974, p. 379, § 4; Ga. L. 1977, p. 691, § 1; Ga. L. 1978, p. 231, §§ 5-7; Ga. L. 1980, p. 1398, § 8; Ga. L. 1983, p. 1411, § 5; Ga. L. 1984, p. 844, § 9; Ga. L. 1985, p. 360, §§ 15, 16; Ga. L. 1986, p. 10, § 43; Ga. L. 1986, p. 364, §§ 9, 10, 11, 12; Ga. L. 1987, p. 3, § 43; Ga. L. 1987, p. 252, §§ 7, 8; Ga. L. 1989, p. 1619, § 8; Ga. L. 1990, p. 650, §§ 5-8; Ga. L. 1991, p. 642, § 7; Ga. L. 1992, p. 1402, § 2; Ga. L. 1992, p. 1541, §§ 2, 3; Ga. L. 1993, p. 123, § 58; Ga. L. 1993, p. 376, § 2; Ga. L. 1995, p. 1302, § 13; Ga. L. 1996, p. 194, § 12; Ga. L. 1998, p. 196, § 7; Ga. L. 2000, p. 1527, § 21; Ga. L. 2003, p. 370, § 14; Ga. L. 2004, p. 398, § 1; Ga. L. 2006, p. 792, § 8/SB 547; Ga. L. 2007, p. 483, § 9/SB 114; Ga. L. 2009, p. 319, § 1/HB 315; Ga. L. 2011, p. 415, § 2/HB 53; Ga. L. 2011, p. 613, § 3/HB 423.)

The 2009 amendment, effective April 30, 2009, substituted the present provisions of paragraph (b)(6) for the former provisions which read: "Accepting, giving, or charging any undisclosed commission, rebate, or direct profit on expenditures made for a principal or any undisclosed commission, rebate, or direct profit for procuring a loan or insurance or for conducting a property inspection related to a real estate transaction;"; substituted the present provisions of paragraph (b)(29) for "Reserved"; and, in paragraph (b)(35), inserted "written" near the beginning and added "and an estimate of such consideration" at the end.

The 2011 amendments. — The first 2011 amendment, effective May 11, 2011, rewrote paragraph (b)(6), which read: "Accepting, giving, or charging any undisclosed commission, fee, rebate, direct profit, or other valuable consideration on expenditures made for a principal or any undisclosed commission, fee, rebate, direct profit for procuring a loan or insurance or for conducting a property inspection, or for any other service related to a real estate transaction;"; deleted former paragraph (b)(29), which read: "Failing to

cause or preventing the disclosure of, on a real estate transaction settlement statement, settlement document, lease agreement, or management agreement, any fee, charge, rebate, profit, commission, referral fee, or other valuable consideration for any service related to such transaction and the recipient of the consideration;"; redesignated former paragraphs (b)(30) through (b)(35) as present paragraphs (b)(29) through (b)(36), respectively; and, in paragraph (b)(36), substituted "licensed broker" for "licensee" near the middle. The second 2011 amendment, effective July 1, 2011, in paragraph (b)(35) (now paragraph (b)(36)), substituted "licensed broker" for "licensee" and deleted "and an estimate of such consideration" from the end.

Cross references. — Civil liability of real estate broker for discriminatory actions in connection with sale or purchase of housing accommodations, §§ 8-3-202 and 8-3-207. Suspension or revocation of license of real estate broker or salesperson for violation of laws relating to discrimination in sale, lease, financing of housing accommodations, § 8-3-208. False or fraudulent advertising, § 10-1-420 et seq.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, “commission on behalf” was substituted for “commission in behalf” in division (b)(17)(C)(i).

Law reviews. — For note on 1993 amendment of this Code section, see 10 Georgia St. U.L. Rev. 23 (1993).

JUDICIAL DECISIONS

Paragraphs contained in this section are regulatory in nature. *Campagna v. Sara Hudson Realty Co.*, 137 Ga. App. 451, 224 S.E.2d 102 (1976) (see O.C.G.A. § 43-40-25(a)).

This section did not create a new legal right. *Campagna v. Sara Hudson Realty Co.*, 137 Ga. App. 451, 224 S.E.2d 102 (1976) (see O.C.G.A. § 43-40-25).

Unless dishonest or criminal activity is involved, this section does not authorize the commission to punish by rules and regulations. *Georgia Real Estate Comm’n v. Warren*, 152 Ga. App. 283, 262 S.E.2d 570 (1979) (see O.C.G.A. § 43-40-25).

Substantial misrepresentation requires intent to mislead. — In order for there to be a “substantial misrepresentation” there must be an intention to mislead. *Georgia Real Estate Comm’n v. James*, 152 Ga. App. 193, 262 S.E.2d 531 (1979).

Revocation of license is discretionary. — Revocation of license, even after hearing evidence of mitigation, is within the commission’s discretion. *Land v. Georgia Real Estate Comm’n*, 142 Ga. App. 860, 237 S.E.2d 243 (1977).

Suspension or revocation of license due to discrimination. — Racial discrimination in housing is a serious problem which demands rectification; to this end this section gives the Real Estate Commission the power to suspend or revoke a realtor’s license if the realtor discriminates. *Georgia Real Estate Comm’n v. Horne*, 141 Ga. App. 226, 233 S.E.2d 16 (1977) (see O.C.G.A. § 43-40-25).

Motivation behind a broker’s actions is irrelevant in cases of discrimination under this section, if in fact such actions amount to racial discrimination in sale of property. *Georgia Real Estate Comm’n v. Horne*, 141 Ga. App. 226, 233 S.E.2d 16 (1977) (see O.C.G.A. § 43-40-25(a)(1)).

Substantial misrepresentation found. — Broker’s failure to reveal material information regarding a defect on property to the purchaser constituted a substantial misrepresentation in violation of O.C.G.A. § 43-40-25. *Georgia Real Estate Comm’n v. Peavy*, 229 Ga. App. 201, 493 S.E.2d 602 (1997).

Disclosure of other bidders. — Real estate agents did not have an affirmative duty to voluntarily disclose the existence of other bidders when soliciting or accepting written offers from potential purchasers. *Rayborn v. Long*, 243 Ga. App. 128, 532 S.E.2d 433 (2000).

Section 43-40-15 imposes no special duties regarding pets. — O.C.G.A. §§ 10-6A-5, 10-6A-14 43-40-15(a), and 43-40-25(b)(25) and related code sections fail to impose any duties regarding pets other than the general duty to exercise reasonable skill and care in performing all duties; a trial court’s summary judgment dismissing claims against real estate agents and brokers for injuries arising from a dog bite while the injured person was viewing listed property for sale was affirmed. *Gibson v. Rezvanpour*, 268 Ga. App. 377, 601 S.E.2d 848 (2004).

Cited in *Flowers v. Georgia Real Estate Comm’n*, 141 Ga. App. 105, 232 S.E.2d 586 (1977); *Kimball Bridge Rd. v. Everest Realty Corp.*, 141 Ga. App. 835, 234 S.E.2d 673 (1977); *Waugh v. Georgia Real Estate Comm’n*, 148 Ga. App. 165, 250 S.E.2d 879 (1978); *Georgia Real Estate Comm’n v. Burnette*, 243 Ga. 516, 255 S.E.2d 38 (1979); *Georgia Real Estate Comm’n v. James*, 152 Ga. App. 193, 262 S.E.2d 531 (1979); *Georgia Real Estate Comm’n v. Brown*, 152 Ga. App. 323, 262 S.E.2d 596 (1979); *Campbell v. Mutual Serv. Corp.*, 152 Ga. App. 493, 263 S.E.2d 202 (1979); *Hartrampf v. Georgia Real Estate Comm’n*, 256 Ga. 45, 343 S.E.2d 485 (1986); *Bowdish v. Johns Creek Assocs.*, 200 Ga. App. 93, 406 S.E.2d 502 (1991).

OPINIONS OF THE ATTORNEY GENERAL

Allowing licensed persons to be affiliated with more than one real estate firm is permitted by the laws governing real estate brokers, although certain multiple affiliations could lead to violations of the law in specific situations. 1983 Op. Att'y Gen. No. 83-26.

Section 43-40-25 yields to § 43-40-20 as to trust accounts. — Exception in O.C.G.A. § 43-40-25(a)(5) to the provision enumerating a ground for sanction of a licensee's license, as an indirect authorization, must yield to the direct command in the more extensive provisions of O.C.G.A. § 43-40-20 requiring trust funds to be placed in a trust or escrow account. 1984 Op. Att'y Gen. No. 84-80.

Surety bond not substitute for trust account. — General partner, who is a licensed broker, in a limited partnership may not purchase a surety bond in lieu of placing security deposits in the broker's designated trust account and, similarly, a partner in a partnership, who is also a licensed real estate broker, may not purchase a surety bond in lieu of placing deposits in a designated trust account. 1984 Op. Att'y Gen. No. 84-80.

Real estate broker's price opinion. — Licensed real estate broker who is not licensed as a real estate appraiser may provide a real estate broker's price opinion to a lending institution for financing purposes. 1999 Op. Att'y Gen. No. 99-15.

RESEARCH REFERENCES

ALR. — Does ordinary broker's contract exclude right of sale by owner, 10 ALR 814; 20 ALR 1268.

Validity of contract by agent for compensation from third person for negotiating loan or sale with principal, 14 ALR 464.

Implied contract of employment of real estate broker to procure customer, 49 ALR 933.

Real-estate broker's right to commission on sale, exchange, or lease of property listed without statement of price or other terms, 169 ALR 380.

Real-estate broker's right to commission where purchaser refuses to go through with executory contract because of reckless misrepresentation made to him by broker respecting property, 9 ALR2d 504.

Effect of statement of real-estate broker to prospective purchaser that property may be bought for less than list price as breach of duty to vendor, so as to bar claim for commission, 17 ALR2d 904.

Rights and remedies where broker or agent, employed to purchase personal property, buys it for himself, 20 ALR2d 1140.

Duty of real-estate broker to disclose that prospective purchaser is a relative, 26 ALR2d 1307.

Broker's nondisclosure or misrepresenta-

tion of sale price of other property as affecting his rights against principal, 32 ALR2d 728.

Agreement between brokers as within statute requiring agreements for commissions for the sale of real estate to be in writing, 44 ALR2d 741.

Grounds for revocation or suspension of license of real-estate broker or salesman, 56 ALR2d 573; 22 ALR4th 136.

Broker's liability for damages or losses sustained by vendor of real property to vendee because of broker's misrepresentations, 61 ALR2d 1237.

Right of principal to recover punitive damages for agent's or broker's breach of duty, 67 ALR2d 952.

Liability of real-estate broker or agent to principal for concealing or failing to disclose offer, 7 ALR3d 693.

Licensed real-estate broker's right to compensation as affected by lack of license on the part of partners, coadventurers, employees, or other associates, 8 ALR3d 523.

Liability of real-estate broker for interference with contract between vendor and another real-estate broker, 34 ALR3d 720.

Validity and construction of anti-blockbusting regulations designed to prevent brokers from inducing sales of realty because of actual or rumored entry

of racial group into neighborhood, 34 ALR3d 1432.

Suspension or revocation of real-estate broker's license on ground of discrimination, 42 ALR3d 1099.

Failure of real-estate broker to disclose to principal fee-splitting agreement with adverse party, or adverse party's broker, as breach of fiduciary duty barring claim for commission, 63 ALR3d 1211.

Revocation or suspension of real estate broker's license for violation of statutes or regulations prohibiting use of unlicensed personnel in carrying out duties, 68 ALR3d 530.

Real estate broker's liability for misrepresentation as to income from or productivity of property, 81 ALR3d 717.

Necessity of having real-estate broker's license in order to recover commission as affected by fact that business sold includes real property, 82 ALR3d 1139.

Application of state antitrust laws to activities or practices of real-estate agents or associations, 22 ALR4th 103.

Right to recover commission from seller where sale fails because of seller's failure to deliver good title, 28 ALR4th 1007.

Remedies for fraud or misrepresentation as to heating or cooling costs of realty purchased, 32 ALR4th 828.

Real-estate broker's or agent's misrepresentation to, or failure to inform, vendor regarding value of vendor's real property, 33 ALR4th 944.

Real-estate broker's liability to purchaser for misrepresentation or nondisclosure of physical defects in property sold, 46 ALR4th 546.

Grounds for revocation or suspension of license of real-estate broker or salesperson, 7 ALR5th 474.

43-40-25.1. Completion of certain forms not practice of law; contents of certain forms.

It shall be lawful for licensees to complete listing or sales contracts or leases whose form has been prepared by legal counsel and such conduct shall not constitute the unauthorized practice of law. In completing a lease or a written offer to buy, sell, lease, rent, or exchange real property, a licensee shall include a description of the property involved, a method of payment, any special stipulations or addenda the offer requires, and, such dates as may be necessary to determine whether the parties have acted timely in meeting their responsibilities under the lease, offer, or contract. (Code 1981, § 43-40-25.1, enacted by Ga. L. 1986, p. 364, § 13; Ga. L. 2003, p. 370, § 15.)

Law reviews. — For annual survey of law of real property, see 38 Mercer L. Rev. 319 (1986).

43-40-25.2. Alternative disciplinary procedures; citations.

(a) It is the intent of the General Assembly to provide the commission with a disciplinary tool which is an alternative to the sanctions provided for in subsection (a) of Code Section 43-40-25. The citation provided for in this Code section shall not be construed as a sanction.

(b) Whenever the evidence gathered in an investigation reveals an apparent violation of this chapter or of the rules and regulations promulgated by the commission or the apparent commission of any

unfair trade practice by a licensee, the commission, in its discretion, may (1) initiate the process for the imposition of sanctions, as provided for in subsection (a) of Code Section 43-40-25 and in accordance with the hearing procedures established for contested cases by Chapter 13 of Title 50, or (2) issue a citation to the licensee. Such citation, which shall be served personally or by mail, shall give notice to the licensee of the alleged violation or violations of this chapter or commission rules or alleged unfair trade practice or practices and inform the licensee of the opportunity to request a contested case hearing to be held in accordance with the procedures established for such hearings by Chapter 13 of Title 50. A citation issued by the commission may include an order to complete a course of study in real estate brokerage or instruction; to file periodic reports by an independent accountant on a real estate broker's designated trust account; or to pay a fine not to exceed \$1,000.00 for each violation of this chapter or its rules and regulations, with fines for multiple violations limited to \$5,000.00 in any one citation, or a combination of the above. If the licensee fails to request a hearing within 30 days of the date of service of the citation, the order contained in the citation shall be final. The failure of a licensee to comply with a final order contained in a citation may be cause for the imposition of a sanction on such person's license, after notice and opportunity for a hearing.

(c) The commission is authorized to promulgate rules and regulations to implement this Code section. Such rules may limit the provisions of this chapter and of its rules and regulations and unfair trade practices which may be the basis for the issuance of a citation. (Code 1981, § 43-40-25.2, enacted by Ga. L. 1999, p. 715, § 6.)

43-40-26. Hearings before commission; judicial review.

(a) Before the commission shall censure a licensee or before revoking or suspending a license, it shall provide an opportunity for a hearing for such holder of a license in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Unless otherwise agreed to by the commission, all such hearings shall be held in the county of domicile of the commission.

(b) If any licensee or applicant fails to appear at any hearing after reasonable notice, the commission may proceed to hear the evidence against such licensee or applicant and take action as if such licensee or applicant had been present. A notice of hearing, initial or proposed decision, or final decision of the commission in a disciplinary proceeding shall be served upon the licensee or applicant by personal service or by certified mail or statutory overnight delivery, return receipt requested, to the last known address of record with the commission. If such material is returned marked "unclaimed" or "refused" or is undeliver-

able and if the licensee or applicant cannot, after diligent effort, be located, the real estate commissioner shall be deemed to be the agent for such licensee or applicant for the purposes of this Code section, and service upon the real estate commissioner shall be deemed service upon the licensee or applicant.

(c) Any person who has exhausted all administrative remedies available within this chapter and who is aggrieved by a final decision in a contested case is entitled to judicial review in accordance with Chapter 13 of Title 50. Notwithstanding any provision of subsection (b) of Code Section 50-13-19 to the contrary, initial judicial review of a final decision of the commission shall be available solely in the superior court of the county of domicile of the commission. (Ga. L. 1925, p. 325, §§ 13, 14; Ga. L. 1929, p. 316, §§ 33, 34; Code 1933, §§ 84-1419, 84-1420, 84-1421; Ga. L. 1949, p. 943, §§ 4, 5; Code 1933, § 84-1422, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 1984, p. 844, § 10; Ga. L. 2000, p. 1527, § 22; Ga. L. 2000, p. 1589, § 3; Ga. L. 2003, p. 370, § 16.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to sub-

section (b) is applicable with respect to notices delivered on or after July 1, 2000.

JUDICIAL DECISIONS

License revocation not criminal proceeding. — Proceeding and hearing before the Georgia Real Estate Commission brought under and heard pursuant to this section was not a criminal case, nor did order and judgment of commission suspending or revoking license of any real estate broker or salesman on a hearing before the commission brought under this law have the effect of an order of a criminal or penal nature. *Bickers v. Georgia Real Estate Comm'n*, 89 Ga. App. 815, 81

S.E.2d 535 (1954) (see O.C.G.A. § 43-40-26).

Expiration of plaintiff's realtor's license does not make appeal moot. — Questions involved in plaintiff's appeal from decision of Real Estate Commission were not made moot by expiration of plaintiff's license, and the court erred in dismissing an appeal on that ground. *Leakey v. Georgia Real Estate Comm'n*, 80 Ga. App. 272, 55 S.E.2d 818 (1949).

43-40-27. Investigation of complaints; subpoenas; confidentiality; publication of licensee name upon revocation or suspension; closed meetings.

(a) The commission may, upon its own motion, and shall, upon the sworn written request of any person, investigate the actions of any applicant for licensure, licensee, or real estate courses and instructors approved by the commission. Except for investigations of applicants for licensure, investigations of allegations of fraudulent conduct or of mishandling of funds held in a fiduciary capacity, or investigations of possible violations of this chapter which have been litigated in the courts or arise from litigation in the courts, the commission shall not initiate an investigation on its own motion or investigate a licensee's

activity as the result of a sworn written request for investigation unless the act or acts which may constitute a violation of this chapter occurred within three years of the initiation of the investigation.

(b) Any person authorized to conduct an investigation on behalf of the commission shall have access to and may examine any writings, documents, or other material which may be related to an investigation made upon the order of the commission.

(c) In the conduct of an authorized investigation, the commissioner or chairperson of the commission may issue subpoenas to compel production of such writings, documents, or material on behalf of the commission. After the service of a notice of hearing, the commissioner or chairperson of the commission may issue subpoenas to compel production of such writings, documents, or material, either on behalf of the commission or at the request of a respondent. The commission or the respondent may apply to the superior court of the county in which a person disobeying a subpoena resides for an order requiring compliance. Failure to comply with such an order shall be punishable as for contempt of court.

(d) The results of all investigations shall be reported only to the commission or to the commissioner, and the records of such investigations shall not be subject to subpoena in civil actions. Records of investigations shall be kept by the commission and no part of any investigative record shall be released for any purpose other than a hearing before the commission or its designated hearing officer, review by another law enforcement agency or lawful licensing authority upon issuance of a subpoena from such agency or authority or at the discretion of the commission upon an affirmative vote of a majority of the quorum of the commission, review by the licensee or applicant who is the subject of the notice of hearing after its service, review by the commission's legal counsel, or an appeal of a decision by the commission to a court of competent jurisdiction; provided, however, if an investigation authorized by this chapter results in the commission's filing a notice of hearing or entering into settlement discussions with a member of the commission, the commission shall immediately notify the Governor or the Governor's legal counsel of such action by the commission. After service of a notice of hearing, a licensee or applicant who is the subject of the notice of hearing shall have a right to obtain a copy of the investigative record pertaining to the hearing. Nothing in this subsection shall prevent the commission, in its sole discretion, from notifying persons who request investigations or the licensee or applicant who is the subject of the notice of hearing of the receipt of a request for investigation or the commission's disposition of the investigation nor from making available to the public any document that becomes a public record during the hearing process authorized by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(e) Whenever the commission revokes or suspends a license, a school approval, or an instructor approval or whenever a licensee, an approved school, or an approved instructor surrenders a license or an approval to the commission in a contested case as defined in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," the commission may publish the name of such licensee, approved school, or approved instructor on its official website or in any other official publication of the agency.

(f) The commission shall have the authority to exclude all persons during the commission's or the staff of the commission's:

(1) Deliberations on disciplinary proceedings;

(2) Meetings with a licensee or an applicant or the legal counsel of that licensee or applicant in which the licensee or applicant seeks to settle a contested case as provided in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; and

(3) Review of the results of investigations initiated under this Code section. (Ga. L. 1925, p. 325, § 11; Ga. L. 1929, p. 316, § 32; Code 1933, § 84-1417; Ga. L. 1949, p. 943, § 4; Code 1933, § 84-1421, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 1979, p. 1203, § 3; Ga. L. 1981, p. 1311, § 6; Ga. L. 1983, p. 1411, § 6; Ga. L. 1985, p. 360, § 17; Ga. L. 1988, p. 1395, §§ 2, 3; Ga. L. 2003, p. 370, § 17; Ga. L. 2006, p. 792, § 9/SB 547.)

JUDICIAL DECISIONS

Constitutionality. — Provision of O.C.G.A. § 43-40-27(d) prohibiting the discovery of any document in the possession of the Real Estate Commission is not violative of due process. *Demery v. Georgia Real Estate Comm'n*, 266 Ga. 288, 466 S.E.2d 591 (1996).

Statements entitled to privilege. — Statements in a request to investigate filed with the Real Estate Commission pursuant to O.C.G.A. § 43-40-27 are entitled to absolute privilege under O.C.G.A. § 51-5-8. *Skoglund v. Durham*, 233 Ga. App. 158, 502 S.E.2d 814 (1998).

Cited in *Flowers v. Georgia Real Estate Comm'n*, 141 Ga. App. 105, 232 S.E.2d 586 (1977); *Kimball Bridge Rd. v. Everest Realty Corp.*, 141 Ga. App. 835, 234 S.E.2d 673 (1977); *Waugh v. Georgia Real Estate Comm'n*, 148 Ga. App. 165, 250 S.E.2d 879 (1978); *Georgia Real Estate Comm'n v. Burnette*, 243 Ga. 516, 255 S.E.2d 38 (1979); *Georgia Real Estate Comm'n v. James*, 152 Ga. App. 193, 262 S.E.2d 531 (1979); *Georgia Real Estate Comm'n v. Brown*, 152 Ga. App. 323, 262 S.E.2d 596 (1979); *Campbell v. Mutual Serv. Corp.*, 152 Ga. App. 493, 263 S.E.2d 202 (1979).

RESEARCH REFERENCES

Am. Jur. 2d. — 12 Am. Jur. 2d, Brokers, §§ 29, 30, 37.

C.J.S. — 12 C.J.S., Brokers, §§ 16 et seq., 40 et seq., 197 et seq.

ALR. — Does ordinary broker's contract exclude right of sale by owner, 10 ALR 814; 20 ALR 1268.

Validity of contract by agent for com-

pensation from third person for negotiating loan or sale with principal, 14 ALR 464.

Implied contract of employment of real estate broker to procure customer, 49 ALR 933.

Real-estate broker's right to commission on sale, exchange, or property listed without statement of price or other terms, 169 ALR 380.

Real-estate broker's right to commission where purchaser refuses to go through with executory contract because of reckless misrepresentation made to him by broker respecting property, 9 ALR2d 504.

Effect of statement of real-estate broker to prospective purchaser that property may be bought for less than list price as breach of duty to vendor, so as to bar claim for commission, 17 ALR2d 904.

Rights and remedies where broker or agent, employed to purchase personal property, buys it for himself, 20 ALR2d 1140.

Duty of real-estate broker to disclose that prospective purchaser is a relative, 26 ALR2d 1307.

Broker's nondisclosure or misrepresentation of sale price of other property as affecting his rights against principal, 32 ALR2d 728.

Agreement between brokers as within statute requiring agreements for commissions for the sale of real estate to be in writing, 44 ALR2d 741.

Grounds for revocation or suspension of license of real-estate broker or salesman, 56 ALR2d 573; 22 ALR4th 136.

Broker's liability for damages or losses

sustained by vendor of real property to vendee because of broker's misrepresentations, 61 ALR2d 1237.

Right of principal to recover punitive damages for agent's or broker's breach of duty, 67 ALR2d 952.

Liability of real-estate broker or agent to principal for concealing or failing to disclose offer, 7 ALR3d 693.

Licensed real-estate broker's right to compensation as affected by lack of license on the part of partners, coadventurers, employees, or other associates, 8 ALR3d 523.

Liability of real-estate broker for interference with contract between vendor and another real-estate broker, 34 ALR3d 720.

Validity and construction of anti-blockbusting regulations designed to prevent brokers from inducing sales of realty because of actual or rumored entry of racial group into neighborhood, 34 ALR3d 1432.

Failure of real-estate broker to disclose to principal fee-splitting agreement with adverse party, or adverse party's broker, as breach of fiduciary duty barring claim for commission, 63 ALR3d 1211.

Real estate broker's liability for misrepresentation as to income from or productivity of property, 81 ALR3d 717.

Right to recover commission from seller where sale fails because of seller's failure to deliver good title, 28 ALR4th 1007.

Real-estate broker's liability to purchaser for misrepresentation or nondisclosure of physical defects in property sold, 46 ALR4th 546.

Grounds for revocation or suspension of license of real-estate broker or salesperson, 7 ALR5th 474.

43-40-27.1. Conviction data.

(a) As used in this Code section, the term "conviction data" means a record of a finding or verdict of guilty or plea of guilty or plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been brought, or a record of a sentencing to first offender treatment without an adjudication of guilt.

(b) After the commission has opened an investigation as authorized by Code Section 43-40-27, the commission shall be authorized to obtain conviction data with respect to an applicant or licensee who is the subject of such investigation. The commission may require any appli-

cant or licensee who is the subject of an investigation conducted pursuant to Code Section 43-40-27 and who has been convicted of, pled nolo contendere to, or been granted first offender treatment upon being charged with any criminal offense other than a traffic violation or any traffic violation that involved driving under the influence of alcohol or drugs, homicide or feticide by vehicle, fleeing the scene of an accident, attempting to elude a police officer, or impersonating a law enforcement officer to submit to the commission two complete sets of classifiable fingerprints of the applicant or licensee. Upon receipt thereof, the commission shall submit both sets of fingerprints to the Georgia Crime Information Center which shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report. The Georgia Crime Information Center shall retain the other set of fingerprints and promptly conduct a search of its own records and records to which it has access. The Georgia Crime Information Center shall notify the commission in writing of any derogatory finding, including, but not limited to, any conviction data regarding the fingerprint records check or if there is no such finding. All conviction data received by the commission shall be used by it for the exclusive purpose of carrying out its responsibilities under this chapter, shall not be a public record, shall be privileged, and shall not be disclosed to any other person or agency except as provided in Code Section 43-40-27. (Code 1981, § 43-40-27.1, enacted by Ga. L. 2000, p. 1527, § 23.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, substituted “fleeing” for “fleeting” in the middle of the second sentence in subsection (b).

43-40-28. Injunctive actions.

Whenever, in the judgment of the commission, any person has engaged in any acts or practices which constitute or will constitute a violation of this chapter, the Attorney General may maintain an action in the name of the state in the superior court of the county in which such violation occurred to abate and enjoin temporarily and permanently such acts and practices and to enforce compliance with this chapter. The plaintiff shall not be required to give any bond. (Code 1933, § 84-1407, enacted by Ga. L. 1973, p. 100, § 1.)

Law reviews. — For article, “Real Estate Syndications As Securities in Georgia — A Review and Comments on the Recent Opinion of the Attorney General,” see 11 Ga. St. B.J. 80 (1974). For article, “A Response: Real Estate Syndications As Securities in Georgia,” see 11 Ga. St. B.J. 153 (1975).

43-40-29. Exceptions to operation of chapter.

(a) Except as otherwise provided, this chapter shall not apply to:

(1) Any person who, as owner, as the spouse of an owner, as general partner of a limited partnership, as lessor, or as prospective purchaser or their regular employees, performs any act with reference to property owned, leased, or to be acquired by such owner, limited partnership, lessor, or prospective purchaser where such acts are performed in the regular course of, or as incident to, the management of such property and the investment therein or any person who manages residential apartment complexes under a contract approved by any federal agency for an organization which is exempt from federal taxes pursuant to Section 501(c)(3) of the Internal Revenue Code, as defined in Code Section 48-1-2, provided that such person was engaged in managing such property under such type contract prior to January 1, 1989;

(2) An attorney in fact under a duly executed power of attorney to convey real estate from the owner or lessor;

(3) A licensed practicing attorney acting solely as an incident to the practice of law;

(4) Any person acting as receiver, trustee in bankruptcy, administrator, executor, or guardian or acting under a court order or under the authority of a will or of a trust instrument;

(5) Any officer or employee of a government agency in the conduct of official duties;

(6) Any person employed by a public or private utility who performs any act with reference to property owned, leased, or to be acquired by the utility employing that person, where such acts are performed in the regular course of, or as incident to, the management of such property and the investment therein;

(7) Any person who, as owner or through another person engaged by such owner on a full-time basis or as owner of a management company whose principals hold a controlling ownership of such property, provides property management services or community association management services, buys, sells, leases, manages, auctions, or otherwise deals with property owned by such person;

(8) Any person employed on a full-time basis by the owner of property for the purpose of providing property management services or community association management services, selling, buying, leasing, managing, auctioning, or otherwise dealing with such property;

(8.1) Any person employed on a full-time basis by a community association for the purpose of providing community association management services;

(9) Any person acting as a referral agent who is not involved in the actual negotiations, execution of documents, collection of rent, management of property, or other related activity which involves more than the mere referral of one person to another and who:

(A) Does not receive a fee for such referral from the party being referred;

(B) Does not charge an advance fee; and

(C) Does not act as a referral agent in more than three transactions per year;

(10) Any individual employed by a broker to assist in property management services on property on which the broker has a written management agreement that the broker procured from and negotiated with the owner, provided that such individual's activities are explicitly authorized by the broker in a written agreement between the broker and the employee and provided that such activities are limited to one or more of the following:

(A) Delivering a lease application, a lease, or any amendment thereto to any person;

(B) Receiving a lease application, a lease, or any amendment thereto, a security deposit, rental payment, or any related payment for delivery to and made payable to the broker or the owner;

(C) Showing a rental unit to any person, provided that the employee is acting under the direct instructions of the broker, and executing leases or rental agreements;

(D) Providing information authorized by the broker about a rental unit, a lease application, or a lease;

(E) Providing information to a tenant about the status of such tenant's security deposit or rent payments or to an owner about the owner's financial accounts and payments from the owner's tenants; and

(F) Performing any ministerial acts that are explicitly authorized by the broker in a written agreement between the broker and the employee.

Any broker utilizing the services of such an employee shall be held responsible under this chapter for the activities of that individual;

(11) Any person who provides property management services on properties available for less than 90 days' occupancy by guests or occupants and meets all of the following conditions:

(A) The property manager enters into a written agreement with the owner specifying all terms and conditions under which the

property is to be managed, the reporting of income and expenses, and the remitting of income to the owner;

(B) The management agreement between the property manager and the owner does not allow the property manager to rent or lease the property and any agreement between the property manager and the guest or occupant is not a lease or rental agreement;

(C) Any applicable zoning laws do not prohibit short-term occupancy uses of the property;

(D) The guest's or occupant's occupancy is for less than 90 days;

(E) No deposit exceeds the cost of the rental required for the minimum rental period;

(F) The guest or occupant pays any required state or local sales taxes or excise taxes on rooms, lodgings, and accommodations and the property manager has any required state or local business licenses or permits;

(G) The property manager has the authority to specify rooms or units that the guest or occupant will occupy;

(H) No extra charge is made for basic utilities;

(I) Notice is not required for a guest or occupant to terminate occupancy of the room or unit, except as provided under the provisions of Article 1 of Chapter 21 of this title; and

(J) The room or unit is not the permanent residence of the guest or occupant;

(12) Any person who is a member of a community association and who provides community association management services only to one community association of which such person is a member;

(13) Any person who performs only physical maintenance on a property; or

(14) A licensed certified public accountant acting solely as an incident to the practice of public accounting.

(b) The exceptions provided by subsection (a) of this Code section shall not apply to any person, other than an owner or individuals who are full-time employees of the owner, who performs the acts of a broker on property required to be registered under Article 1, 2, or 5 of Chapter 3 of Title 44.

(c) The exceptions provided by subsection (a) of this Code section shall not apply to any person who holds a real estate license.

(d) The exceptions in subsection (a) of this Code section are not applicable to a person who uses or attempts to use them for the purpose

of evading licensure required by this chapter. (Ga. L. 1925, p. 325, § 2; Code 1933, § 84-1403; Ga. L. 1965, p. 629, § 3; Ga. L. 1973, p. 100, § 1; Ga. L. 1980, p. 1398, § 2; Ga. L. 1982, p. 3, § 43; Ga. L. 1985, p. 360, § 18; Ga. L. 1986, p. 364, §§ 14, 15; Ga. L. 1989, p. 1619, § 9; Ga. L. 1995, p. 1216, § 9; Ga. L. 1996, p. 194, § 13; Ga. L. 2003, p. 370, § 18; Ga. L. 2005, p. 1030, § 12/SB 55.)

Law reviews. — For annual survey on law of real property, see 43 Mercer L. Rev. 353 (1991). For annual survey article on

real property law, see 52 Mercer L. Rev. 383 (2000).

JUDICIAL DECISIONS

Legislative intent to require license of one procuring purchasers of property for compensation. — By enacting former Code 1933, §§ 84-1426, 84-1402 and 84-1403 (see O.C.G.A. §§ 43-40-1, 43-40-29, and 43-40-30), the legislature intended to require a person to obtain a license before procuring real property purchasers in return for compensation. *Berchenko v. Fulton Fed. Sav. & Loan Ass'n*, 149 Ga. App. 526, 254 S.E.2d 745, aff'd, 244 Ga. 733, 261 S.E.2d 643 (1979).

Legislature intended to exempt owner regardless of any encumbrance upon the owner's land from any provisions of law applicable to brokers and salespeople of real estate. *Gray v. Georgia Real Estate Comm'n*, 209 Ga. 301, 71 S.E.2d 645 (1952).

Commission has no power to require owners of land to procure licenses before selling land, or to otherwise interfere with complete freedom of such owners in sale of the owners' own land. *Gray v. Georgia Real Estate Comm'n*, 209 Ga. 301, 71 S.E.2d 645 (1952).

Referrals for compensation are not exempt. — Those who merely refer one person to another are exempted from the licensure requirement; however, if a fee, commission, or other valuable consideration is promised or intended to be paid for the referral service, by definition the referral agent is a broker and must be licensed. *Berchenko v. Fulton Fed. Sav. & Loan Ass'n*, 244 Ga. 733, 261 S.E.2d 643 (1979).

Plaintiff suing as broker not exempt under § 43-40-29(a)(1) or (a)(7), even though co-owner. — Phrase "as owner" in this section was construed to

mean in capacity as owner. When the plaintiffs were suing in the plaintiffs' capacities as brokers, even though the plaintiffs were also incidentally co-owners, these exclusions did not apply. *Pendley v. Jessee*, 134 Ga. App. 138, 213 S.E.2d 496 (1975) (see O.C.G.A. § 43-40-29(a)(1) and (a)(7)).

Broker-joint owner, acting as broker for co-owners, may sue for commission from co-owners. — Mere absence of specific statutory provision for situations of joint owners acting as brokers does not warrant conclusion that such owners are not entitled to act as brokers for their co-owners and to enforce their contractual right to broker's commissions. *Pendley v. Jessee*, 134 Ga. App. 138, 213 S.E.2d 496 (1975).

Exemption not raised in trial court. — When a former employee alleged that the employee was entitled to quantum meruit against the former employer for having found a buyer for the employer's property, for which the employer had orally indicated that the employer would reward the employee, but the employee failed to raise in the trial court that the employee was a referral agent who was exempt from the real estate licensing statutes pursuant to O.C.G.A. § 43-40-29(a)(9), the issue was not reviewable on appeal; thus, summary judgment under O.C.G.A. § 9-11-56(c) was granted to the employer, as the employee was not licensed under O.C.G.A. §§ 43-40-1(2)(A) and 43-40-30(a). The true nature of the exchange was a sale of real estate and an agreement was prohibited by the licensing statutes; accordingly, it could not be the basis of a quantum meruit claim. *Everett v. Goodloe*, 268 Ga. App. 536, 602 S.E.2d 284 (2004).

Person suing as qualified for the exception under O.C.G.A. § 43-40-29(a)(8) was not entitled to compensation since the person's claim was based wholly on an expectation of a commission for providing real estate brokerage services. *Johnson v. Oriental Weavers Rug Mfg. Co.*, 241 Ga. App. 15, 525 S.E.2d 738 (1999).

Apartment management firm exempt from licensing requirements. — Apartment management firm which was employed directly or indirectly by the

owner of the property to perform daily management duties was excepted under O.C.G.A. § 43-40-29(a)(8) from the licensing requirements of O.C.G.A. Ch. 40, T. 43. *Piedmont Eng'g & Constr. Corp. v. Balcor Partners-84 II, Inc.*, 196 Ga. App. 486, 396 S.E.2d 279 (1990), cert. denied, 196 Ga. App. 909, 396 S.E.2d 279 (1990).

Cited in *Newborn v. Trust Co. Bank*, 148 Ga. App. 70, 251 S.E.2d 45 (1978); *Krizan v. Newman & Co.*, 153 Ga. App. 337, 265 S.E.2d 68 (1980).

OPINIONS OF THE ATTORNEY GENERAL

Brokers and salespeople as owners not exempt. — This section did not except from statutory provisions brokers or salespeople when dealing with their own property. 1976 Op. Att'y Gen. No. 76-101 (see O.C.G.A. § 43-40-29).

Employees selling broker's property must be licensed. — If a broker sells personal real estate through a brokerage company, or otherwise represents to prospective purchasers that the purchasers are dealing with a licensed broker, the broker may employ only licensed salespersons to make such sales on the broker's behalf. 1977 Op. Att'y Gen. No. 77-26.

Employees negotiating agreements for property management company must be licensed. 1977 Op. Att'y Gen. No. 77-26.

General partner of limited partnership who manages partnership property. — Even though the general partner in a limited partnership need not be licensed to manage the property owned by the limited partnership, if licensed, the general partner must account for funds and management responsibilities as all other licenses. 1984 Op. Att'y Gen. No. 84-80.

To the extent the general partner in a limited partnership manages the property

owned by the partnership full time and receives no separate fee, commission, or salary for the brokerage aspects of this management, it would appear that the general partner is excepted from the licensure and regulatory requirements under O.C.G.A. § 43-40-29(a)(7), but if the general partner also managed the property of others, that exception would not apply and that person would be required to be licensed by the commission. 1984 Op. Att'y Gen. No. 84-80.

Dual employment. — Exceptions to licensure for employees do not contemplate dual employment since the exceptions reference "regular" or "full-time" employment. 1984 Op. Att'y Gen. No. 84-80.

When unlicensed firm may use word "realty" in name. — Individual, firm, or corporation may use the name "realty" and may actually deal in real estate without obtaining a license from the Georgia Real Estate Commission provided that such person, firm, or corporation does not for another and for a fee, commission, or other valuable consideration, sell, exchange, buy, rent, or offer or attempt to negotiate a sale, exchange, purchase or rental of any estate or interest in real estate or collect or offer or attempt to collect rent for the use of real estate. 1950-51 Op. Att'y Gen. p. 150.

RESEARCH REFERENCES

ALR. — Implied contract of employment of real estate broker to procure customer, 49 ALR 933.

Application and effect of statute relating to real estate brokers as regards bro-

ker from out of state, 86 ALR 640; 159 ALR 274.

Who is real-estate agent, salesman, or broker within meaning of statute, 167 ALR 774.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

43-40-30. Acting without a license; cease and desist order; judicial review; effect of Code section on other remedies.

(a) Any person who, directly or indirectly, with the intention or upon the promise of receiving any valuable consideration, offers, attempts, or agrees to perform, or performs, any single act defined in paragraph (2) of Code Section 43-40-1, whether as a part of a transaction or as an entire transaction, shall be deemed a licensee within the meaning of this chapter. The commission of a single such act by a person who is required to be licensed under this chapter but who is not so licensed shall constitute a violation of this chapter.

(b) It shall be unlawful for any person, directly or indirectly, to engage in or conduct the business of, or advertise or hold himself or herself out as engaging in or conducting the business of, or act in the capacity of, a licensee within this state without first obtaining a license as provided in this chapter unless such person is exempted from obtaining a license under Code Section 43-40-29.

(c) Notwithstanding any other provisions of law to the contrary, the commission may issue a cease and desist order prohibiting any person from violating the provisions of this chapter by engaging in the practice of a real estate broker without a license. Such cease and desist order shall be final ten days after it is issued unless the person to whom such order is issued requests a hearing before the commission.

(d) The violation of any cease and desist order of the commission under subsection (c) of this Code section shall subject the person violating the order to further proceedings before the commission, and the commission shall be authorized to impose a fine not to exceed \$1,000.00 for each transaction constituting a violation of such order. Each day that a person practices in violation of this chapter shall constitute a separate violation.

(e) Initial judicial review of the decision of the commission entered pursuant to this Code section or an action for enforcement of such decision shall be available solely in the superior court of the county of domicile of the commission.

(f) Nothing in this Code section shall be construed to prohibit the commission from seeking remedies otherwise available by statute without first seeking a cease and desist order in accordance with the provisions of this Code section. (Ga. L. 1925, p. 325, § 1; Ga. L. 1931, p. 231, § 1; Code 1933, § 84-1401; Ga. L. 1943, p. 572, § 1; Ga. L. 1949, p. 943, § 2; Ga. L. 1950, p. 278, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 166, § 1; Ga. L. 1956, p. 404, § 1; Ga. L. 1965, p. 629, § 1; Code 1933,

§ 84-1402, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 1985, p. 360, § 19; Ga. L. 1988, p. 1395, § 4; Ga. L. 1989, p. 1619, § 10; Ga. L. 1990, p. 650, § 9; Ga. L. 1995, p. 1216, § 10.)

Cross references. — False or fraudulent advertising, § 10-1-420 et seq.

JUDICIAL DECISIONS

Contracts made without having obtained a license are illegal and void, and there can be no recovery for services rendered. *Drake v. Parkman*, 79 Ga. App. 679, 54 S.E.2d 714 (1949).

When a former employee alleged that the employee was entitled to quantum meruit against the former employer for having found a buyer for the employer's property, for which the employer had orally indicated that the employer would reward the employee, but the employee failed to raise in the trial court that the employee was a referral agent who was exempt from the real estate licensing statutes pursuant to O.C.G.A. § 43-40-29(a)(9), the issue was not reviewable on appeal; thus, summary judgment under O.C.G.A. § 9-11-56(c) was granted to the employer, as the employee was not licensed under O.C.G.A. §§ 43-40-1(2)(A) and 43-40-30(a). The true nature of the exchange was a sale of real estate and an agreement was prohibited by the licensing statutes; accordingly, it could not be the basis of a quantum meruit claim. *Everett v. Goodloe*, 268 Ga. App. 536, 602 S.E.2d 284 (2004).

Legislative intent to require license of one who procures purchasers for compensation. — By enacting Ga. L. 1973, p. 100 (see O.C.G.A. §§ 43-40-1, 43-40-29, and 43-40-30), the legislature intended to require a person to obtain a license before procuring real property purchasers in return for compensation. *Berchenko v. Fulton Fed. Sav. & Loan Ass'n*, 149 Ga. App. 526, 254 S.E.2d 745, aff'd, 244 Ga. 733, 261 S.E.2d 643 (1979).

Anyone performing any act defined in this section without being licensed violates the law. *Krizan v. Newman & Co.*, 246 Ga. 214, 271 S.E.2d 135 (1980) (see O.C.G.A. § 43-40-1).

Licensed broker may recover commission although unlicensed accord-

ing to law of property's situs. — General rule is that if a broker is licensed according to the laws of the state where the broker's contract of employment is made the broker may recover a commission even though not licensed according to the law of the situs of the property. *Paris v. Cooper*, 158 Ga. App. 212, 279 S.E.2d 507 (1981).

There is no legal requirement that a real estate broker or salesperson also be a member of a board of realtors. *Nixon v. Gwinnett County Bd. of Realtors, Inc.*, 249 Ga. 862, 295 S.E.2d 78 (1982).

Unknowing client of unlicensed broker may recover back commission paid. — When one enters into a real estate brokerage contract with another who has not procured a license to do business as a broker, and pays a commission to the person acting in the capacity of a real estate broker, without knowing that the person had not obtained a license, one may recover back the commission so paid. *Grant v. Elder*, 146 Ga. App. 64, 245 S.E.2d 341 (1978).

Attorney prohibited from recovering fee representing commission. — Attorney was prohibited from enforcing client's single promise to pay an attorney a lump-sum fee in the amount of ten percent of the sale price of the client's property when a part of the consideration for the client's promise was illegal because the attorney was not a licensed real estate broker. *Starr v. Robinson*, 181 Ga. App. 9, 351 S.E.2d 238 (1986).

Unlicensed participant held not broker's agent. — Facts did not support allegation that unlicensed participant in sale of realty was the agent of a real estate broker. Thus, the trial court properly granted the broker's motion for summary judgment. *Holtzendorf v. Seckinger*, 195

Ga. App. 177, 393 S.E.2d 13 (1990), cert. denied, 195 Ga. App. 898, 393 S.E.2d 13 (1991).

Unlicensed person may not recover commission. — Person acting as a real estate broker who has failed to obtain a license from the Georgia Real Estate Commission is precluded by such failure from recovering compensation under a contract for services rendered in procuring a sale of real estate. *Padgett v. Silver Lake Park Corp.*, 40 Ga. App. 199, 149 S.E. 179 (1929).

When broker's associate not licensed, broker cannot recover associate's commission. — Because the plain-

tiff did business as a real estate broker and one of plaintiff's associates transacted business without a license, the plaintiff is precluded from recovering a commission on the contract. *Lee v. Moseley*, 40 Ga. App. 371, 149 S.E. 808 (1929).

Cited in *Newborn v. Trust Co. Bank*, 148 Ga. App. 70, 251 S.E.2d 45 (1978); *MPI Corp. v. Northside Realty Assocs.*, 151 Ga. App. 516, 260 S.E.2d 499 (1979); *Northside Realty Assocs. v. MPI Corp.*, 245 Ga. 321, 265 S.E.2d 11 (1980); *Krizan v. Newman & Co.*, 153 Ga. App. 337, 265 S.E.2d 68 (1980); *Wanamaker v. Esther Wynne Realty Assocs.*, 163 Ga. App. 338, 294 S.E.2d 581 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Referral agents must be licensed unless the agents can establish that the agents are entitled to the exempt status as

set forth in former Code 1933, § 84-1403 (see O.C.G.A. § 43-40-29(a)(9)). 1980 Op. Att'y Gen. No. 80-115.

RESEARCH REFERENCES

ALR. — Implied contract of employment of real estate broker to procure customer, 49 ALR 933.

Application and effect of statute relating to real estate brokers as regards broker from out of state, 86 ALR 640; 159 ALR 274.

Want of license as affecting broker's recovery of compensation for services, 169 ALR 767.

Validity of statute or ordinance requiring real estate brokers to procure license, 39 ALR2d 606.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

Validity and construction of license tax or fee, or business privilege or occupational tax, on persons renting or leasing out real estate, 93 ALR2d 1136.

Revocation or suspension of real estate broker's license for violation of statutes or regulations prohibiting use of unlicensed personnel in carrying out duties, 68 ALR3d 530.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

Right of attorney, as such, to act or become licensed to act as real estate broker, 23 ALR4th 230.

43-40-30.1. Employer-employee or broker-independent contractor relationships between licensees.

Nothing contained in this chapter shall be construed as establishing an employer-employee or broker-independent contractor relationship between licensees. Whether brokers and their affiliated licensees establish employer-employee or broker-independent contractor relationships shall be at the discretion of the licensees. (Code 1933, § 84-1427, enacted by Ga. L. 1982, p. 1001, § 9; Code 1981, § 43-40-30.1, enacted by Ga. L. 1982, p. 1001, § 17.)

43-40-30.2. Broker's license granted to corporation, partnership, or limited liability company engaged in providing community association management services; qualifications of qualifying broker.

Repealed by Ga. L. 1996, p. 194, § 14, effective July 2, 1997.

Editor's notes. — This Code section was based on Code 1981, § 43-40-30.2, enacted by Ga. L. 1996, p. 194, § 14.

43-40-31. Penalty.

Any person acting as a real estate licensee within the meaning of this chapter without a license and any person who violates any other provision of this chapter shall be guilty of a misdemeanor. (Ga. L. 1925, p. 325, § 18; Ga. L. 1927, p. 307, § 26; Ga. L. 1929, p. 316, § 36; Code 1933, § 84-9921; Ga. L. 1973, p. 100, § 2; Ga. L. 2000, p. 1527, § 24.)

JUDICIAL DECISIONS

Cited in Drake v. Parkman, 79 Ga. App. 679, 54 S.E.2d 714 (1949); Citizens & S. Nat'l Bank v. AVCO Fin. Servs., Inc., 129 Ga. App. 605, 200 S.E.2d 309 (1973).

RESEARCH REFERENCES

ALR. — Revocation or suspension of real estate broker's license for violation of statutes or regulations prohibiting use of unlicensed personnel in carrying out duties, 68 ALR3d 530.

Necessity of having real-estate broker's

license in order to recover commission as affected by fact that business sold includes real property, 82 ALR3d 1139.

Right of attorney, as such, to act or become licensed to act as real estate broker, 23 ALR4th 230.

43-40-32. Termination.

Repealed by Ga. L. 1992, p. 3137, § 33, effective July 1, 1992.

Editor's notes. — This Code section was based on Ga. L. 1982, p. 1001, §§ 2, 18 and Ga. L. 1988, p. 1395, § 5.

CHAPTER 41

RESIDENTIAL AND GENERAL CONTRACTORS

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		43-41-16.	Grounds for revocation of license; authorized action by division in event of wrongdoing; interest and penalties; continuing education as requirement for resumption of standing.
		43-41-17.	Effective date of licensing and sanctioning provisions; unenforceable contracts; compliance with county or municipal requirements; exemption for DOT contractors; other exceptions.

Editor's notes. — Code Sections 43-41-1 through 43-41-20 were based on Ga. L. 1968, p. 137, §§ 1 through 10 and 12 through 16; Ga. L. 1971, p. 357, §§ 1 through 3; Ga. L. 1980, p. 60, § 1; Ga. L. 1980, p. 1511, §§ 1 through 12; Ga. L. 1981, p. 423, § 2; Ga. L. 1982, p. 3, § 43; Ga. L. 1983, p. 679, § 1; Ga. L. 1984, p. 452, § 1; Ga. L. 1987, p. 1093, §§ 1 through 11; Ga. L. 1988, p. 482, § 1; Ga. L.

1989, p. 1181, § 1; Ga. L. 1990, p. 282, § 1; and Ga. L. 1991, p. 1784, §§ 1 through 15.

As provided in Code Section 43-41-20, the State Board of Recreation Examiners was terminated on July 1, 1992. Code Sections 43-41-14 and 43-41-15 had previously been repealed by Ga. L. 1991, p. 1784, §§ 11 and 12, effective April 23, 1991.

Law reviews. — For survey article on construction law, see 59 Mercer L. Rev. 55 (2007).

RESEARCH REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d, Building and Construction Contracts, §§ 29 et seq., 129 et seq.

43-41-1. Legislative findings.

It is the intent of the General Assembly, in the interest of public health, safety, and welfare, to safeguard homeowners, other property owners, tenants, and the general public against faulty, inadequate, inefficient, and unsafe residential and general contractors. The practice of residential and general contracting is declared to be a business or profession affecting the public interest and this chapter shall be liberally construed so as to accomplish the intent and purposes stated in this Code section. (Code 1981, § 43-41-1, enacted by Ga. L. 2004, p. 786, § 1.)

JUDICIAL DECISIONS

Preliminary injunction improper. — Superior court erred in granting contractors a preliminary injunction restraining the Georgia State Licensing Board for Residential and General Contractors and a county from enforcing a licensing law, O.C.G.A. § 43-41-1 et seq., because: (1) harm did not flow to the contractors from any failure on the part of the county to comply with notice of the licensing law pursuant to O.C.G.A. § 43-41-14(b) or to provide other specific notice of the licensing law going into effect since the lack of notice did not result in the contractors' consequent failure to comply with the law and thereby obtain an exemption under O.C.G.A. § 43-41-17(a); (2) the grant of the preliminary injunction operated oppressively on the rights of the county and the Board and also on the rights of the citizens of the state since the injunction effectively enjoined, without an apparent valid basis, the operation of a licensing law; and (3) the refusal to grant the requested injunction would not work irreparable injury to the contractors or leave the contractors without remedy in the event the contractors ultimately prevailed

in the contractors' challenge to the licensing law; § 43-41-14(b) became effective on May 29, 2007, approximately a month before the July 1, 2007 deadline for filing an application for examination exemption, and under that general statute the contractors were charged with notice of the licensing law including the time-limited provision allowing an examination exemption. Ga. State Licensing Bd. for Residential & Gen. Contrs. v. Allen, 286 Ga. 811, 692 S.E.2d 343 (2010).

Venue proper. — Venue of contractors' action seeking to restrain the Georgia State Licensing Board for Residential and General Contractors and a county from enforcing a licensing law, O.C.G.A. § 43-41-1 et seq., was proper in Muscogee County because there was substantial equitable relief sought that was common to the Board and to the resident county; the complaint alleged that enforcement of the licensing law by both the Board and the county would cause irreparable injury to the contractors, and the complaint asked that preliminary and permanent injunctions be issued against both the county and the Board enjoining and restraining

them from exercising any of the powers, rights, or duties respecting enforcement of the licensing law. Ga. State Licensing Bd. for Residential & Gen. Contrs. v. Allen, 286 Ga. 811, 692 S.E.2d 343 (2010).

Cited in Stephens v. Trust for Pub. Land, 475 F. Supp. 2d 1299 (N.D. Ga. 2007).

43-41-2. Definitions.

As used in this chapter, the term:

(1) "Board" means the State Licensing Board for Residential and General Contractors.

(2) "Business organization" means any partnership, corporation, limited liability entity, business trust, joint venture, or other legal entity, other than an individual person, doing business or seeking, offering, or contracting to do business as a contractor or otherwise performing or acting as a contractor as defined in this Code section.

(3) "Contracting" means performing or causing to be performed any of the activities set forth in paragraphs (4), (5), (9), (10), and (11) of this Code section which define the types of contractors. The offering of contracting services and the negotiation of or bid or proposal for engagement or a contract requiring performance of these services also constitutes contracting.

(4) "Contractor," except as specifically exempted by this chapter, means a person who is qualified, or required to be qualified, under this chapter and who, for compensation, contracts to, offers to undertake or undertakes to, submits a bid or a proposal to, or personally or by others performs the construction or the management of the construction for an owner of any building, bridge, or other structure, including a person who installs industrialized buildings as defined in paragraphs (3) and (4) of Code Section 8-2-111, for the construction or improvement of, addition to, or the repair, alteration, or remodeling of any such building, bridge, or structure for use by the owner or by others or for resale to others. The term "contractor" for purposes of this chapter shall include a person who contracts to, undertakes to, or submits a bid or proposal to perform, or otherwise does himself or herself perform, for an owner:

(A) Construction management services relative to the performance by others of such construction activities where the person performing such construction management services is at risk contractually to the owner for the performance and cost of the construction; and

(B) Services of a contractor as part of performance of design-build services, whether as a prime contractor, joint venture

partner, or as a subcontractor to a design professional acting as prime contractor as part of a design-build entity or combination.

Both residential and general contractors, in addition to contractors licensed under Chapter 14 of this title to perform such work or any component thereof, shall be permitted to construct storm-water management systems comprising any storm-water conveyance or storm-water detention facility that moves storm or surface water from a specific point on a wholly contained construction project site to another specific point on the same project site and which are wholly contained within the project site and are not part of or connected to any public or private water treatment system, waste-water treatment system, or storm-water system.

(5) "General contractor" means a contractor whose services are unlimited as to the type of work which he or she may do, subject to the financial limitations as may be imposed by a subclassification created pursuant to paragraph (8) of subsection (b) of Code Section 43-41-5, and who may contract for, undertake to perform, submit a bid or a proposal or otherwise offer to perform, and perform any activity or work as a contractor requiring licensure under this chapter including within its scope any work requiring licensure under Chapter 14 of this title; provided, however, that any work contractually undertaken by a general contractor in the nature of electrical contracting, plumbing, conditioned air contracting, low voltage contracting, or utility contracting which falls within the licensing requirements of Chapter 14 of this title may not be performed by the general contractor but shall only be performed by a person who is duly licensed to perform such work under Chapter 14 of this title. The construction of all private, commercial, institutional, industrial, public, and other buildings and structures under contract with or engagement directly by an owner shall be undertaken by a general contractor, except as otherwise expressly set forth in or excluded from operation of this chapter.

(6) An "owner" of real property means a person or entity that has a majority ownership interest in the real property to be improved and for whom an improvement is made or who contracts with or engages, directly or through an agent, the contractor to perform the construction work or services.

(7) "Qualifying agent" means a person who possesses the requisite skill, knowledge, and experience and has the responsibility to supervise, direct, manage, and control all of the contracting activities within the State of Georgia of a contractor doing business in the form of a business organization, with which he or she is affiliated by employment or ownership; who has the responsibility to supervise, direct, manage, and control construction activities on any project for

which he or she has obtained the building permit pursuant to Code Section 43-41-14; and whose technical and personal qualifications have been determined by investigation and examination as provided in this chapter, except as exempted under Code Section 43-41-8, as attested by the division.

(8) "Real property" means the real estate, or an interest therein, that is improved, including leaseholds, tenements, and easements, and improvements constructed or placed thereon.

(9) "Residential contractor" means any contractor who may contract for, undertake to perform, submit a bid or a proposal or otherwise offer to perform, and perform any activity or work as a contractor requiring licensure under this chapter for a fixed price, commission, fee, wage, or other compensation or who undertakes any activity or work on his or her own behalf or for any person or business organization that is not licensed as a licensed residential contractor pursuant to this chapter where such activity or work falls into the category of residential-basic contractor or residential-light commercial contractor as defined in this Code section and where the total value of the work or activity or of the compensation to be received by the contractor for such activity or work, whichever is the higher, exceeds \$2,500.00. The term "residential contractor" shall include both a residential-basic contractor and a residential-light commercial contractor, except where otherwise expressly stated. The work or activity performed by a residential contractor may include within its scope any work requiring licensure under Chapter 14 of this title; provided, however, that any work contractually undertaken by a residential contractor in the nature of electrical contracting, plumbing, conditioned air contracting, low voltage contracting, or utility contracting which falls within the licensing requirements of Chapter 14 of this title may not be performed by the residential contractor but shall only be performed by a person who is duly licensed to perform such work under Chapter 14 of this title.

(10) "Residential-basic contractor" means and encompasses a person who performs contractor work or activity relative to detached one-family and two-family residences and one-family townhouses not over three stories in height and their accessory buildings and structures;

(11) "Residential-light commercial contractor" means and encompasses a person who performs any contractor work or activity performed by a residential-basic contractor and, additionally, shall include such contractor work or activity related to multifamily and multiuse light commercial buildings and structures, and their related accessory buildings and structures, which are less than four stories in height; less than 25,000 square feet in aggregate interior floor space,

except as otherwise provided in this chapter; and are constructed of wood or light gauge metal frame, brick veneer, prefabricated, or manufactured type of construction; or are preengineered steel buildings not exceeding 50,000 square feet of interior floor space; provided that such buildings or structures are not of the type of building or structure that would constitute a special hazard to property or to life and safety of persons as defined in subparagraphs (A), (C), (D), (E), (F), (G), (G.1), (H), (I), and (J) and subparagraph (B), as it applies to a building of four or more stories, of paragraph (1) of subsection (b) of Code Section 25-2-13.

(12) "Specialty contractor" means a contractor whose scope of work and responsibility is of limited scope dealing with only a specific trade and directly related and ancillary work and whose performance is limited to such specialty construction work requiring special skill and requiring specialized building trades or crafts, including, but not limited to, such activities, work, or services requiring licensure under Chapter 14 of this title. (Code 1981, § 43-41-2, enacted by Ga. L. 2004, p. 786, § 1; Ga. L. 2007, p. 569, § 1/SB 115; Ga. L. 2008, p. 324, § 43/SB 455.)

43-41-3. Creation of State Licensing Board for Residential and General Contractors; membership; divisions; vacancies; qualifications; terms; meetings.

(a) There is created the State Licensing Board for Residential and General Contractors consisting of 15 members appointed by the Governor for five-year terms. The board shall be assigned to the Secretary of State's office for administrative purposes and shall be under the jurisdiction of the division director and shall operate in accordance with and pursuant to the provisions of Chapter 1 of this title, as applicable. The board shall be comprised of two divisions: the residential contractor division, having jurisdiction of and authority over the two subcategories of residential contracting, residential-basic contractors and residential-light commercial contractors, and the general contractor division. Eight members shall be appointed and serve as members of the residential contractor division of the board and seven members shall be appointed and serve as members of the general contractor division of the board. Members shall serve until the expiration of their respective terms and until their successors are appointed and qualified. Vacancies occurring during a term shall be filled by appointment of the Governor for the remainder of the unexpired term and such replacement shall meet the requirements and criteria of selection of the person previously holding the vacant position. To be eligible to serve on the respective divisions of the board, each contractor member shall be and remain actively involved in the construction contracting business and

shall have been so engaged for a period of not less than five consecutive years before the date of appointment in the particular contracting business, as a residential contractor or general contractor, corresponding to the division for which such person is appointed. Any contractor members whose term continues after or who are appointed to terms commencing two years from the date that this chapter becomes effective must also have been licensed and certified by the respective division of the board to operate as a contractor in the category to which the member is appointed. The position of any appointive member of the board who, during his or her term of appointment, shall cease to meet the qualifications for original appointment shall be immediately vacated. No member of the board shall be appointed to serve more than two full terms.

(b) The residential contractor division shall consist of eight members and, except as otherwise expressly stated in this chapter, shall have jurisdiction of and authority over the practice of the two subcategories of residential contracting, residential-basic contractors and residential-light commercial contractors. Six members shall be residential contractors eligible for licensure under this chapter; provided, however, that effective January 1, 2008, all residential contractor members shall be required to be licensed under this chapter. At least two of the residential contractor members shall be qualified to perform residential-light commercial type projects; three shall be qualified and shall predominantly perform residential-basic type projects; one shall be a residential contractor whose business predominantly involves remodeling projects; one shall be a residential contractor who constructs at least an average of 20 residences per year; and all must be geographically diverse. One member shall be a public building official and one member shall be a public member. The public member shall have no ties with the residential construction industry and shall represent the interests of the public at large. The initial member terms on the residential contractor division shall be staggered so that all terms do not expire simultaneously. Three members shall serve initial terms of five years, three members shall serve initial terms of four years, one member shall serve an initial term of three years, and one member shall serve an initial term of one year. The residential contractor division shall meet at least six times each year for the purpose of transacting such business as may properly come before it.

(c) The general contractor division shall consist of seven members and, except as otherwise expressly stated in this chapter, shall have jurisdiction of and authority over the practice of general contracting. Five members shall be general contractors eligible for licensure under this chapter. Effective January 1, 2008, all general contractor members shall be required to be licensed under this chapter. At least two of the general contractor members shall be small-volume builders with an

annual contracting volume of less than \$5 million and all of whom must be geographically diverse. One member shall be a currently licensed or registered architect or engineer and one member shall be a public building official. The initial member terms on the general contractor division shall be staggered so that all terms do not expire simultaneously. Three members, including at least two contractor members, shall serve initial terms of five years; three members, including at least two contractor members, shall serve initial terms of four years; and one member shall serve an initial term of three years. The general contractor division shall meet at least six times each year for the purpose of transacting such business as may properly come before it. (Code 1981, § 43-41-3, enacted by Ga. L. 2004, p. 786, § 1; Ga. L. 2005, p. 1179, § 1/SB 124; Ga. L. 2007, p. 569, § 2/SB 115; Ga. L. 2007, p. 623, § 1/HB 224.)

Code Commission notes. — The amendment of this Code section by Ga. L. 2007, p. 569, § 2, irreconcilably conflicted with and was treated as superseded by Ga. L. 2007, p. 623, § 1. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

Pursuant to Code Section 28-9-5, in 2007, “predominantly” was substituted for “predominately” preceding “involves remodeling” in the third sentence of subsection (b).

43-41-4. Appointment of members; chairperson; meetings and quorums; assistance from professional licensing boards division.

(a) The initial members of the board shall be appointed no later than July 1, 2005. The fifteenth member of the board shall be appointed not later than July 1, 2007. The board shall meet within 30 days after its appointment at a time and place to be designated by the Governor and organize by electing a chairperson and a vice chairperson, each to serve for a one-year term.

(b) The office of chairperson of the board shall be rotated between the two divisions enumerated in this chapter, with the office of vice chairperson to be held by a member of the division other than that in which the chairperson serves, unless the board, through its rules and regulations, provides otherwise. Any vacancy in the office of chairperson shall be filled by the members for the unexpired term. The person selected to fill the vacancy shall be a member of the same division as the chairperson whose departure has created the vacancy.

(c) The board shall meet at the call of the chairperson or upon the recommendation of a majority of its members. Eight members of the board, including at least three members from each of its divisions, shall constitute a quorum for transaction of business by the board.

(d) Each division within the board shall also elect from its membership a chairperson and a vice chairperson who shall each serve for a

term of two years. Any vacancy in the office of either the chairperson or vice chairperson shall be filled by one of the members of the respective division for the unexpired term.

(e) Any member elected chairperson of a division may not serve more than two consecutive full terms of office.

(f) Each division shall carry out its powers and duties as provided for in this chapter with the assistance of the division director and staff of the professional licensing boards division of the Secretary of State's office and the officers and staff of the board. Each division of the board shall operate and transact its business independently of the other division and of the board at large, except as required by this chapter and to the extent of common interests and functions, including staffing and administration. Each division of the board shall have delegated from the board the power and authority to take all appropriate actions in the organization and administration of each respective division and the effectuation and implementation of the licensing and enforcement processes required under this chapter, subject to ultimate oversight and review by the board.

(g) The divisions of the board shall meet at the call of the chairperson of the division.

(h) The board shall not take action on any matter specifically delegated to and under the authority and control of the one of its divisions unless at least four of its members from the affected division are present and participating in such action or decision.

(i) The division director, or his or her designee, shall keep a record of the proceedings of the board and its respective divisions. (Code 1981, § 43-41-4, enacted by Ga. L. 2004, p. 786, § 1; Ga. L. 2005, p. 1179, § 2/SB 124; Ga. L. 2007, p. 623, § 2/HB 224.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, “, 2005” was substituted for “of the year in which this chapter becomes effective” in the first sentence in subsection (a).

43-41-5. Board meetings; power of board and its divisions; investigations; immunity from liability; failure to appear at hearing; voluntary surrender of license; application; subpoenas.

(a) The board shall meet at least twice each year for the purpose of transacting such business as may properly come before it and of overseeing the operation of its divisions.

(b) The board and its divisions shall have the power to:

(1) Request from the various departments, agencies, and authorities of the state and its political subdivisions and their agencies and

authorities such available information as they may require in their work; and all such departments, agencies, and authorities shall furnish such requested available information to the board and its divisions within a reasonable time;

(2) Provide by regulation for reciprocity with other states or territories of the United States in the licensing of residential and general contractors, provided that such other states have requirements substantially equal to the requirements in force in this state for registration, licensure, or certification and that any such contractor holding a current and valid license, certificate, or registration from another state or territory seeking licensure by way of reciprocity shall demonstrate that such applicant meets, in the discretion of the respective division, the qualifications, requirements, and criteria set forth in Code Section 43-41-6, other than the requirement to take and pass an examination as set forth in subsection (d) of Code Section 43-41-6, and that such applicant is otherwise in compliance with all requirements of the State of Georgia for transaction of such business within this state; provided, further, that a similar privilege is offered to residents of this state by the other state or territory;

(3) Establish and adjust fees as necessary within the limits set forth in Chapter 1 of this title;

(4) Adopt official seals for their use and change them at pleasure;

(5) Establish the policies and procedures for regulating the businesses of residential contracting and general contracting and provide interpretation and guidance regarding the implementation and application of such policies and procedures;

(6) Determine qualifications for licensure or certification, including such experience requirements as the board deems necessary;

(7) Promulgate and adopt rules and regulations necessary to carry out this chapter;

(8) Establish and define appropriate categories of general contractor licensure based upon financial criteria; and

(9) Allow for inactive status pursuant to Code Section 43-1-22.

(c) Regarding the powers and authorities conferred by this Code section relative to the residential-light commercial contractor subcategory of the residential contractor classification under this chapter, due to the characteristics of such subcategory, such powers and authorities shall be delegated to and conferred upon, in the first instance, a combined and overlapping subdivision comprising four members of both of the divisions, two of whom shall be the residential-light commercial qualified members of the residential contractor division and two of

whom shall be the small volume qualified members of the general contractor division, with neither division having sole oversight and control of such powers and authorities. The chairperson of such combined subdivision shall be rotated annually between the chairperson of the residential contractor division and the chairperson of the general contractor division, with the residential contractor chairperson initially serving as chairperson. The combined subdivision shall meet at the call of such chairperson. However, regarding the actual issuance of licenses under this chapter for residential-light commercial contracting and any powers and authorities relative to administration, oversight, control, or disciplinary action of persons issued such licenses, pursuant to Code Sections 43-41-10, 43-41-11, 43-41-13, 43-41-15, and 43-41-16, the residential contractor division shall have full power and authority. Any determinations made or actions taken by this subdivision shall be subject to the ultimate review, oversight, control, power, and authority of the board.

(d)(1) The division director is authorized to make, or cause to be made through employees or contract agents of the board, such investigations as he or she or the board may deem necessary or proper for the enforcement of the provisions of this chapter. Any person properly conducting an investigation on behalf of the board shall have access to and may examine any writing, document, or other material relating to the fitness of any licensee or applicant. The division director or his or her appointed representative may issue subpoenas to compel such access upon a determination that reasonable grounds exist for the belief that a violation of this chapter or any other law relating to the practice of residential or general contracting may have taken place.

(2) The results of all investigations initiated by the board shall be reported solely to the board, and the records of such investigations shall be kept for the board by the division director, with the board retaining the right to have access at any time to such records. No part of any such records shall be released, except to the board, for any purpose other than a hearing before the board, nor shall such records be subject to subpoena; provided, however, that the board shall be authorized to release such records to another enforcement agency or lawful licensing authority.

(3) The board shall have the authority to exclude all persons during its deliberations on disciplinary proceedings and to discuss any disciplinary matter in private with a licensee or applicant and the legal counsel of that licensee or applicant.

(e) A person, firm, corporation, association, authority, or other entity shall be immune from civil and criminal liability for reporting or investigating the acts or omissions of a licensee or applicant which

violate the provisions of this chapter or any other provision of law relating to a licensee's or applicant's fitness to practice as a licensed residential or general contractor or for initiating or conducting proceedings against such licensee or applicant, if such report is made or action is taken in good faith, without fraud or malice.

(f) The denial of a license on grounds other than those enumerated in this chapter, the issuance of a private reprimand, the denial of a license by reciprocity, the denial of a request for reinstatement of a revoked license, or the refusal to issue a previously denied license shall not be considered to be a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Notice and hearing within the meaning of Chapter 13 of Title 50 shall not be required, but the applicant or licensee shall be allowed to appear before the appropriate division if he or she so requests.

(g) If any licensee or applicant fails to appear at any hearing after reasonable notice, the board may proceed to hear the evidence against such licensee or applicant and take action as if such licensee or applicant had been present. A notice of hearing, initial or recommended decision, or final decision of the board in a disciplinary proceeding shall be served upon the licensee or applicant by certified mail or statutory overnight delivery, return receipt requested, to the last known address of record with the board. If such material is returned marked "unclaimed" or "refused" or is otherwise undeliverable and if the licensee or applicant cannot, after diligent effort, be located, the division director shall be deemed to be the agent for service for such licensee or applicant for purposes of this Code section, and service upon the division director shall be deemed to be service upon the licensee or applicant.

(h) The voluntary surrender of a license shall have the same effect as a revocation of the license, subject to reinstatement in the discretion of the board.

(i) This Code section shall apply equally to all licensees or applicants whether individuals, partners, or members of any other incorporated or unincorporated associations, corporations, business organizations, or other associations of any kind whatsoever.

(j) All subpoenas issued pursuant to the authority granted in this chapter shall be subject to the general rules of law with respect to distance, tender of fees and expenses, and protective orders; and any motion made with respect thereto shall be made to and passed on by a judge of the superior court of the county of residence of the person to whom the subpoena is directed. (Code 1981, § 43-41-5, enacted by Ga. L. 2004, p. 786, § 1; Ga. L. 2007, p. 569, § 3/SB 115.)

43-41-6. Application and appropriate fee; eligibility for licensure as residential-basic contractor, residential-light commercial contractor, general contractor; examination of qualified applicants; renewal of licenses; continuing education requirements.

(a) Anyone seeking to be licensed as a residential contractor or as a general contractor in this state shall file an application on a form provided by the residential contractor or general contractor division, respectively, accompanied by an application fee as provided by the board. Such an application may be submitted either by:

(1) An individual person seeking issuance of a license in his or her own name for purposes of engaging in the profession of residential or general contracting in his or her own name or doing business as an individual in a trade name as a sole proprietorship; or

(2) An individual person affiliated by ownership or employment with and acting as a qualifying agent for a business organization seeking to engage in the profession of residential or general contracting in the name of the business organization in accordance with and pursuant to Code Section 43-41-9.

Additionally, all applicants must submit to and successfully pass an examination prepared by, prepared for, or approved by the appropriate division, except where an applicant is otherwise qualified for licensure and has satisfied the appropriate division requirements and regulations for licensure pursuant to Code Section 43-41-8 exempting such applicant from the examination requirement or where the applicant is an individual acting as a qualifying agent for a business organization and has previously obtained and maintained continuously a license issued by the appropriate division, either as an individual doing business in his or her own name or doing business as an individual in a trade name as a sole proprietor or as a qualifying agent for another business organization.

(b) A person shall be eligible for licensure as a residential-basic contractor by the residential contractor division if the person:

(1) Is at least 21 years of age;

(2) Is of a good character and is otherwise qualified as to competency, ability, and integrity;

(3) Has at least two years of proven experience working as or in the employment of a residential contractor, predominantly in the residential-basic category, or other proven experience deemed substantially similar by the division; and

(4) Has had significant responsibility for the successful performance and completion of at least two projects falling within the

residential-basic category in the two years immediately preceding application.

(c) A person shall be eligible for licensure as a residential-light commercial contractor by the residential-light commercial subdivision if the person:

- (1) Is at least 21 years of age;
- (2) Is of a good character and is otherwise qualified as to competency, ability, and integrity;
- (3) Meets eligibility requirements according to one of the following criteria:

(A) Has received a baccalaureate degree from an accredited four-year college or university in the field of engineering, architecture, construction management, building construction, or other field acceptable to the division and has at least one year of proven experience working as or in the employment of a residential contractor, general contractor, or other proven experience deemed substantially similar by the division;

(B) Has a combination acceptable to the division of academic credits from any accredited college-level courses and proven practical experience working as or in the employment of a residential contractor, general contractor, or other proven experience deemed substantially similar by the division equaling at least four years in the aggregate. For purposes of this subparagraph, all university, college, junior college, or community college-level courses shall be considered accredited college-level courses; or

(C) Has a total of at least four years of proven active experience working in a construction industry related field, at least two of which shall have been as or in the employment of a residential contractor, or other proven experience deemed acceptable by the division; and

(4) Has had significant responsibility for the successful performance and completion of at least two projects falling within the residence-light commercial category in the four years immediately preceding application.

(d) A person shall be eligible for licensure as a general contractor by the general contractor division if the person:

- (1) Is at least 21 years of age;
- (2) Is of a good character and is otherwise qualified as to competency, ability, integrity, and financial responsibility; and
- (3) Meets eligibility requirements according to one of the following criteria:

(A) Has received a baccalaureate degree from an accredited four-year college or university in the field of engineering, architecture, construction management, building construction, or other field acceptable to the division and has at least one year of proven experience working as or in the employment of a general contractor or other proven experience deemed substantially similar by the division;

(B) Has a combination acceptable to the division of academic credits from any accredited college-level courses and proven practical experience working as or in the employment of a general contractor or other proven experience deemed substantially similar by the division equaling at least four years in the aggregate. For purposes of this subparagraph, all university, college, junior college, or community college-level courses shall be considered accredited college-level courses; or

(C) Has a total of at least four years of proven active experience working in a construction industry related field, at least two of which shall have been as or in the employment of a general contractor, or other proven experience deemed acceptable by the division and at least one of which shall have been in or relating to administration, marketing, accounting, estimating, drafting, engineering, supervision, or project management, or functions deemed substantially similar by the division.

(e) Before being entitled to take an examination or otherwise qualify for issuance of a license, an applicant must show to the satisfaction of the residential contractor division or general contractor division from the application and proofs furnished that the applicant is possessed of a good character and is otherwise qualified as to competency, ability, integrity, and financial responsibility. The application shall include a list of all persons, entities, and business organizations that the applicant will be affiliated with as a licensed residential contractor or general contractor, whether by way of employment, ownership, serving as an owner or director, partnership, or membership or by serving as a qualifying agent under this chapter. Applicants for a general contractor license shall provide proof of a minimum net worth in an amount which is specified by the general contractor division. Additionally, all applicants shall provide proof of general liability insurance and of workers' compensation insurance as required by the laws of this state in their name. However, if and to the extent the applicant is submitted as a person seeking to act as a qualifying agent of a particular business organization, such proofs and information shall relate and pertain to such business organization rather than the individual applicant, subject to the limitations set forth in subsection (d) of Code Section 43-41-9. All applicants shall also provide their social security numbers, if

applying as an individual, or the federal taxpayer identification numbers of any business organization for which the applicant is seeking licensure as a qualifying agent. Applicants for a general contractor's license shall also provide suitable verification of tax payments in a form and manner and for the duration prescribed by the general contractor division; provided, however, that where the application is seeking license as a qualifying agent of a business organization, such tax verification and information shall relate and pertain to that business organization. The decision of the appropriate division as to the qualifications of applicants shall, in the absence of fraud, be conclusive. A certificate by the insurer or other appropriate evidence of such coverages shall be maintained with the appropriate division and shall be a condition of renewal. A licensee, on his or her own behalf or where acting as a qualifying agent on behalf of the business organization so qualified, must notify the appropriate division in writing within 30 days of any changes in the information required to be on file with such division, including, but not limited to, the licensee's and, if the licensee is acting as a qualifying agent for any business organization, such business organization's current mailing address, insurance coverages, and affiliated entities.

(f)(1) The residential contractor division and the general contractor division shall each conduct or cause to be conducted an examination of all qualified applicants, except those exempted from the examination requirement pursuant to Code Section 43-41-8.

(2) The residential contractor division shall conduct or cause to be conducted separate examinations for applicants for residential-basic and residential-light commercial licenses for the purpose of determining a particular applicant's ability to make a practical application of his or her knowledge of the profession of residential contracting in the particular subcategory for which a license is sought; the applicant's qualifications in reading plans and specifications; his or her knowledge of building codes, estimating costs, construction, ethics, contracting, and other similar matters pertaining to such residential contracting business; his or her knowledge as to the responsibilities of a residential contractor to the public and to owners, subcontractors, and suppliers; and his or her knowledge of the requirements of the laws of this state relating to residential-basic and residential light-commercial contractors, construction, workers' compensation, insurance, and liens.

(3) The general contractor division shall conduct or cause to be conducted an examination to ascertain the particular applicant's ability to make a practical application of his or her knowledge of the profession of commercial general contracting; the applicant's qualifications in reading plans and specifications; his or her knowledge of

building codes, estimating costs, construction, ethics, contracting, and other similar matters pertaining to the general contracting business; his or her knowledge as to the responsibilities of a general contractor to the public and to owners, subcontractors, and suppliers; and his or her knowledge of the requirements of the laws of this state relating to general contractors, construction, workers' compensation, insurance, surety bonding, and liens.

(4) If the results of the applicant's examination are satisfactory to the appropriate division, or he or she is exempted from the examination requirement under Code Section 43-41-8, and if he or she and any affiliated business organization has met the other qualifications and requirements set forth in this Code section, then the appropriate division shall issue to the applicant a license to engage in business as a residential or general contractor in this state, as provided in such license, in his or her own name as a sole proprietor or as a qualifying agent for the affiliated business organization and in the name of such business organization, pursuant to and in accordance with the requirements set forth in Code Section 43-41-9. A residential contracting license shall indicate for which of the two subcategories, residential-basic or residential-light commercial, the licensee is qualified.

(g) Any otherwise qualified applicant failing this examination may be reexamined at any regularly scheduled examination within one year of the date of original application upon payment of a reexamination fee, in an amount to be set by the board, without need to resubmit an application, unless any information set forth in the previously submitted application is no longer accurate or complete. Anyone requesting to take the examination a third or subsequent time shall wait at least one calendar year after the taking of the last examination and shall submit an application with the appropriate examination fees.

(h) A residential contractor license, indicating whether relating to the residential-basic or residential-light commercial category, or general contractor license shall be issued to an applicant who successfully completes the respective requirements therefor upon the payment of fees prescribed by the board.

(i) Such licenses shall be renewable biennially. Licenses may be renewed subsequent to their expiration within six months of the date of expiration by submitting a renewal as prescribed by the board and paying a late renewal fee as determined by the board. After six months has elapsed from the date of expiration, such license may be reinstated in accordance with the rules and regulations of the board.

(j) The division director shall give advance notice to each person holding a license under this chapter of the date of the expiration of the

certificate of registration and the amount of the fee required for renewal at least one month prior to the expiration date, but the failure to receive such notice shall not avoid the expiration of any license not renewed in accordance with this Code section.

(k) As a condition of renewal, the appropriate division may require licensees to complete division approved continuing education of not more than three hours annually for a residential-basic license, six hours annually for a residential-light commercial license, and eight hours annually for a general contractor license. (Code 1981, § 43-41-6, enacted by Ga. L. 2004, p. 786, § 1; Ga. L. 2007, p. 569, § 4/SB 115.)

43-41-7. Written warranties required.

A licensed residential contractor and any affiliated entities shall offer a written warranty in connection with each contract to construct, or superintend or manage the construction of, any single-family residence where the total value of the work or activity or the compensation to be received by the contractor for such activity or work exceeds \$2,500.00. The residential contractor division shall establish the minimum requirements of such warranty. The parties to the warranty may agree to submit any or all disputes arising under the warranty to arbitration. Such agreement to arbitrate shall be enforceable as provided in Part 1 of Article 1 of Chapter 9 of Title 9, the "Georgia Arbitration Code." (Code 1981, § 43-41-7, enacted by Ga. L. 2004, p. 786, § 1; Ga. L. 2011, p. 752, § 43/HB 142.)

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, revised punctuation in the first sentence.

Law reviews. — For survey article on construction law, see 60 Mercer L. Rev. 59 (2008). For annual survey on construction law, see 61 Mercer L. Rev. 65 (2009).

43-41-8. Eligibility for licensure without examination; reciprocity; burden upon applicant.

(a) Notwithstanding any other provision of this chapter to the contrary, the following persons desiring to qualify for a residential contractor license or a general contractor license under the provisions of this chapter, either individually or as a qualifying agent, shall be eligible for issuance of such a license by the appropriate division without examination, provided that such person submits a proper application and proofs, pays or has paid the required fees, otherwise meets the requirements of Code Section 43-41-6 for licensure, and is not otherwise in violation of this chapter:

(1) Any person who holds a current and valid license to engage in the comparable category of residential or general contracting issued to him or her by any governing authority of any political subdivision

of this state which requires passing an examination which is substantially similar to the state examination for residential or general contractors, provided that such person is a Georgia resident and citizen, if an individual applying in his or her own behalf, or is seeking licensure as a qualifying agent for a business organization incorporated in Georgia or otherwise authorized and certified to transact business in Georgia with a regular office and place of business in Georgia currently and having had such office and place of business continuously for the five years immediately preceding such application; provided, further, that the examination results are made available to the appropriate division. Such application and request for exemption must be submitted within the time limits set forth in subsection (a) of Code Section 43-41-17;

(2) Any person who has successfully and efficiently engaged in the comparable category of residential or general contracting in this state as provided in this Code section; provided, however, that such person shall be either a resident and citizen of the State of Georgia or, if applying as a qualifying agent for a business organization, such business organization shall be either incorporated in Georgia or is a business organization otherwise authorized and certified to transact business in Georgia with a regular office and place of business in Georgia currently and having had such office and place of business continuously for the five years immediately preceding such application; provided, further, that such application and request for exemption is submitted within the time limits set forth in subsection (a) of Code Section 43-41-17. To prove that he or she has successfully engaged in residential-basic or residential-light commercial projects, the person shall be required to give evidence of three successful projects located in Georgia which were successfully completed over the period of five years immediately prior to the time of application; evidence of ten successfully completed residential-basic or residential-light commercial projects located in Georgia over the period of ten years immediately prior to the time of application; or evidence that he or she has participated in or been engaged in residential-basic or residential-light commercial construction in a supervisory or management capacity for seven of the ten years immediately prior to the time of application. To prove that he or she has successfully engaged in commercial general contracting, the person submitting the application shall be required to give evidence of five successful general contracting projects located in Georgia which were successfully completed over the period of five years immediately prior to the time of application or evidence of ten successful general contracting projects located in Georgia which were successfully completed over the period of ten years immediately prior to the time of application, such projects having been performed either

by such person acting as an individual or by a business organization in which such individual person was affiliated by employment or ownership and over which such person had general oversight and management responsibilities;

(3) Any person who holds a current and valid license to practice a comparable category of residential or general contracting issued by another state or territory of the United States, where either such state or territory has entered into a reciprocal agreement with the board and divisions for the recognition of contractor licenses issued in that state or territory, or such application is pursuant to and in accordance with the regulations and requirements for reciprocity promulgated by the divisions in accordance with subsection (b) of Code Section 43-41-5. Additionally, such application shall meet the following requirements:

(A) The criteria for issuance of such license or certification by such other state or territory, including the requirement to successfully complete an examination, were substantially equivalent to Georgia's current license criteria;

(B) The application requirements and application form submitted to the other state or territory upon which such license was issued are available for review by the appropriate division and the examination results are made available to the appropriate division;

(C) The applicant shall demonstrate that he or she meets the qualifications, requirements, and criteria set forth in subsections (a), (b), (c), and (d) of Code Section 43-41-6; and

(D) The applicant is otherwise in compliance with all requirements of this state for transaction of such business within this state; provided, however, that such application and request for exemption shall be submitted in accordance with subsection (a) of Code Section 43-41-17; and

(4) Any person who holds a current and valid license issued under this chapter to engage in the comparable category of residential or general contracting which license was issued to him or her in their capacity either as an individual licensee or as a qualifying agent for a business organization.

(b) Any applicant for issuance of a residential contractor or general contractor license under this title who shall seek exemption from the examination requirement under this Code section, on any basis set forth above, shall have the burden of establishing to the satisfaction and within the discretion of the appropriate division that the requirements for such exemption have been satisfied. The decision of such division as to the satisfaction of the requirements for such exemption

from taking the examination shall, in the absence of fraud, be conclusive.

(c) Any business organization that had an applicant submit a complete and satisfactory application pursuant to this Code section, but was not issued a license due to the death of the qualifying agent applicant prior to the issuance of the license, shall remain eligible for consideration under this Code section with the submission of a new qualifying agent applicant for such business entity. (Code 1981, § 43-41-8, enacted by Ga. L. 2004, p. 786, § 1; Ga. L. 2006, p. 272, § 1/HB 1542; Ga. L. 2007, p. 569, § 5/SB 115; Ga. L. 2008, p. 324, § 43/SB 455; Ga. L. 2010, p. 3, § 1/HB 579.)

The 2010 amendment, effective July 1, 2010, added subsection (c).

43-41-9. Licensing of individuals and organizations; joint ventures treated uniquely; notification to division of changes; separation of sole qualifying agent; disciplinary actions taken against organizations; payment of fees; joint responsibility for work product.

(a) If an individual applicant proposes to engage in residential or general contracting in the individual's own name or a trade name where the individual is doing business as a sole proprietorship, the license shall be issued only to that individual. Where an applicant under this chapter is seeking issuance of a residential or general contractor license on behalf and for the benefit of a business organization seeking to engage in residential or general contracting as a business organization, the application for a license under this chapter must be submitted by and through an individual qualifying agent for such business organization or entity and expressly on behalf of such business organization or entity. In such case, the license shall be issued to the individual qualifying agent and to the affiliated business organization or entity on whose behalf the application was made. It shall be unlawful for any person, firm, corporation, or association to operate a business organization or entity engaged in the business of residential or general contracting without first obtaining a license from the appropriate division after the effective date of the licensing requirements as specified in subsection (a) of Code Section 43-41-17. The appropriate division shall not issue a license to any business organization or entity to engage in residential or general contracting unless such business organization or entity employs at least one currently licensed individual residential or general contractor serving as its qualifying agent who is actually engaged by ownership or employment in the practice of residential or general contracting for such business organization or entity and provides adequate supervision and is responsible for the

projects of such business organization or entity. A business organization may allow more than one person to act as a qualifying agent for such organization, subject to each such individual qualifying agent having successfully satisfied the requirements for issuance of a license under this chapter and having obtained issuance of such a license by the appropriate division. Each such business organization shall have at least one qualifying agent in order to be considered authorized to engage in such contracting business.

(b) The application for a license by a qualifying agent must include an affidavit on a form provided by the board attesting that the individual applicant has final approval authority for all construction work performed by the business organization or entity within the State of Georgia and that the individual applicant has final approval authority on all construction matters, including contracts and contract performance and financial affairs related to such construction matters, for each construction job for which his or her license was used to obtain the building permit.

(c) A joint venture is considered a separate and distinct organization for licensing purposes under this chapter and must be qualified and licensed in accordance with the appropriate division's rules and regulations either:

(1) In its own name as a separate business organization; or

(2) By each of the members of the joint venture doing business as a residential contractor or general contractor holding, as an individual or as a business organization acting through its qualifying agent, a valid and current residential or general contractor's license issued by the appropriate division.

Each such licensed individual or qualifying agent shall be considered a qualifying agent of such joint venture.

(d) If, during the period encompassed by a license issued to a qualifying agent acting for and on behalf of an affiliated business organization, there is a change in any information that is required to be stated on the application, the business organization shall, within 45 days after such change occurs, furnish the correct information to the appropriate division.

(e)(1) At least one qualifying agent shall be licensed under this chapter in order for the business organization to obtain a license as a residential or general contractor. If any qualifying agent ceases to be affiliated with such business organization, for any reason, he or she shall so inform the division having jurisdiction. In addition, if such qualifying agent is the only qualifying agent licensed hereunder affiliated with the business organization, the business organization

shall promptly notify the appropriate division of the termination of the relationship with that qualifying agent and shall have 120 days from the termination of the qualifying agent's affiliation with the business organization to employ another qualifying agent and submit an application for licensure under the new qualifying agent. The submission of such application shall serve to maintain the licensed status of the business organization pending and subject to approval of such application by the appropriate division; provided that, should such application be denied by that division, then, after passage of the 120 day period, the business organization shall cease to be considered licensed as a residential or a general contractor unless and until a new application is submitted and approved by the appropriate division. In such circumstance, the affected business organization may not thereafter engage in residential or general contracting until a new qualifying agent is employed, unless the appropriate division has granted a temporary nonrenewable license to the financially responsible officer, the president or chief executive officer, a partner, or, in the case of a limited partnership, the general partner, who thereafter shall assume all responsibilities of a qualifying agent for the business organization or entity. This temporary license shall only allow the entity to proceed with incomplete contracts already in progress. For the purposes of this paragraph, an incomplete contract is one which has been awarded to, or entered into by, the business organization prior to the cessation of affiliation of the qualifying agent with the business organization or one on which the business organization was the low bidder and the contract is subsequently awarded, regardless of whether any actual work has commenced under the contract prior to the qualifying agent ceasing to be affiliated with the business organization.

(2) A person licensed under this chapter either as an individual doing business in his or her name or doing business in a trade name as a sole proprietor may serve as a qualifying agent for a business organization upon application and demonstration of satisfaction by such business organization of all financial and insurance requirements pursuant to Code Section 43-41-6. A qualifying agent may serve in such capacity for more than one business organization, provided that he or she shall satisfy the criteria for serving in such capacity with regard to each such business organization. A qualifying agent shall inform the division having jurisdiction in writing when he or she proposes to engage in contracting in his or her own name or in affiliation as a qualifying agent with another business organization, and he or she or such new business organization shall supply the same information to the division as required of applicants under this chapter. Such person shall be deemed to be a licensed residential or general contractor for the original term of his or her license for the

purpose of engaging in contracting as an individual in his or her own name, provided that he or she qualified for such license based on his or her own personal qualifications as to financial responsibility and insurance. Otherwise, such individual shall be required to submit a new application demonstrating satisfaction of such financial and insurance requirements in order to engage in the business of contracting under this chapter as an individual in his or her own name or doing business as an individual in a trade name as a sole proprietor or by the business organization he or she desires to qualify in order to obtain a license for such other business organization, but such person shall be entitled to continue engaging in the business of residential or general contracting in accordance with and under his or her previously issued license unless and until the appropriate division determines that the person seeking issuance of the license no longer meets these requirements.

(3) Upon a favorable determination by the division having jurisdiction, after investigation of the financial responsibility, if applicable, and insurance of the applicant, the division shall notify the applicant, whether the applicant was previously approved as an individual or a qualifying agent, that the applicant is approved, without an examination, for a new license.

(f) Disciplinary action and other sanctions provided in this chapter may be administered against a business organization operating under a license issued through its licensed qualifying agent or agents in the same manner and on the same grounds as disciplinary actions or sanctions against an individual or license holder acting as its qualifying agent under this chapter. The divisions or the board may deny the license to a qualifying agent for any business organization if the qualifying agent or business organization has been involved in past disciplinary actions or on any grounds for which individual licenses can be denied.

(g) Each qualifying agent shall pay the appropriate division an amount equal to the original fee for a license applied for on behalf of a new business organization. If the qualifying agent for a business organization desires to qualify additional business organizations, the division shall require him or her to present evidence of the financial responsibility, if applicable, and insurance of each such organization.

(h) All qualifying agents for a business organization are jointly and equally responsible for supervision of all construction related operations of the business organization, for all field work at all sites, and for financial matters within the State of Georgia for each construction job for which his or her license was used to obtain the building permit.

(i) Any change in the status of a qualifying agent is prospective only. A qualifying agent shall for purposes of application of this chapter and

the enforcement and disciplinary mechanisms thereunder be and remain responsible for his or her actions or omissions as well as those of the business organization for which such person had acted as a qualifying agent occurring during his or her period of service as such qualifying agent as and to the extent set forth in this chapter. A qualifying agent is not responsible for his or her predecessor's actions, but is responsible, even after a change in status, for matters for which he or she was responsible while in a particular status. Further, nothing in this chapter shall be interpreted as a basis for imposition of civil liability against an individual qualifying agent by any owner or other third party claimant beyond the liability that would otherwise exist legally or contractually apart from and independent of the individual's status as a qualifying agent. (Code 1981, § 43-41-9, enacted by Ga. L. 2004, p. 786, § 1; Ga. L. 2007, p. 569, § 6/SB 115; Ga. L. 2010, p. 266, §§ 42, 43/SB 195.)

The 2010 amendment, effective May 20, 2010, in subsection (b), substituted "construction matters" for "business matters" in the middle and substituted "related to such construction matters, for each construction job for which his or her license was used to obtain the building

permit" for "of the business organization or entity" at the end; and, in subsection (h), inserted "construction related" and substituted "for each construction job" for ", both for the organization in general and for each specific job" near the end.

43-41-10. Reprimand, revocation, or other corrective actions authorized; issuance of stop-work orders; adoption of rules and regulations; lifting of suspension.

(a) In addition to the powers and authorities conferred upon the board and its divisions pursuant to Chapter 1 of this title, the residential contractor division and the general contractor division shall have the power, respectively, to reprimand any person or licensee, or to suspend, revoke, or refuse to grant, renew, or restore a license to any person or licensee if such person or licensee is found by the appropriate division to have engaged in any fraud or deceit in obtaining a license or otherwise to have engaged in gross negligence, repeated or persistent incompetence, intentional misconduct in the practice of his or her profession, or willful violation of any provisions of this chapter.

(b) For purposes of this Code section, a person or business organization operating on an expired, revoked, lapsed, or suspended license shall be considered unlicensed.

(c) The separate divisions may issue a stop-work order for all unlicensed work falling within their respective jurisdictions upon finding probable cause to believe that construction work which requires a license under this chapter is being performed by a person without such a current, valid license. Such an order may be enforced by

injunctive relief, cease and desist orders, or other related actions within the power and authority of the board and its respective divisions.

(d) The division having jurisdiction shall investigate and sanction any license holder found to have engaged in fraud, deceit, gross negligence, repeated or persistent incompetence, or intentional misconduct in the practice of residential or general contracting; and sanctions shall be assessed against any such residential or general contractor licensed under this chapter either individually or as a business organization acting through a qualifying agent. Such charges, unless dismissed without hearing by the division as unfounded, shall be heard and determined by that division in accordance with the provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(e) The divisions shall each adopt and publish in print or electronically rules and regulations, consistent with the provisions of this chapter, governing the suspension and revocation of licenses.

(f) Each division may reissue a license to any person whose license has been revoked or lift a suspension of a license to such person provided that four or more members of the division vote in favor of such reissuance or lifting for reasons that division deems sufficient. (Code 1981, § 43-41-10, enacted by Ga. L. 2004, p. 786, § 1; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted "in print or electronically" in subsection (e).

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 2004, Code Section 43-14-10, as enacted by Ga. L. 2004, p. 786, § 1, was redesignated as Code Section 43-41-10.

43-41-11. Effect of licensure.

The issuance of a license by the residential contractor or the general contractor division shall be evidence that the person named therein, including both the individual licensee and any business organization for whom such licensee is a qualifying agent, is entitled to all the rights and privileges of a licensed residential or general contractor while such license remains unrevoked or unexpired. (Code 1981, § 43-41-11, enacted by Ga. L. 2004, p. 786, § 1.)

43-41-12. Penalty for violating provisions; architect or engineer utilizing nonlicensed personnel.

(a) Any person, whether an individual or a business organization, who:

(1) Contracts for or bids upon or engages in the construction of any of the projects or works enumerated in the definitions of residential contractor or general contractor in Code Section 43-41-2 without

having first complied with the appropriate provisions of this chapter or who shall attempt to practice residential contracting or general contracting in this state except as provided for in this chapter;

(2) Falsely represents, advertises, or holds himself or herself or an affiliated business organization out as a residential contractor or general contractor licensee duly authorized to perform work under such classification of licensure pursuant to this chapter;

(3) Represents or attempts to use or presents as his or her own the license of another person or, in the case of a business organization, a person other than its qualifying agent;

(4) Gives false or forged evidence of any kind to the board or its divisions or to any member of the board in maintaining a license;

(5) Uses an expired, suspended, or revoked license to continue engaging in residential contracting or general contracting;

(6) Operates a business organization engaged in contracting after 120 days following the termination of its only qualifying agent without designating another primary qualifying agent, except as provided in Code Section 43-41-9; or

(7) Intentionally and repeatedly misrepresents or manipulates the value or percentage of work at the time of contract under subsections (e) and (f) of Code Section 43-41-17 to avoid the licensing requirements of this chapter,

shall be guilty of a misdemeanor and shall, upon conviction, be punished for each such offense by a fine of not less than \$500.00 or imprisonment of three months, or both fine and imprisonment in the discretion of the court.

(b) Any architect or engineer who recommends to any project owner the award of a contract to anyone known by such architect or engineer not to be properly licensed under this chapter shall be subject to such penalties as provided in subsection (a) of this Code section and also to any appropriate disciplinary action by the appropriate division.

(c) Except as otherwise provided in this Code section, any person who violates any provision of this chapter shall be guilty of a misdemeanor. (Code 1981, § 43-41-12, enacted by Ga. L. 2004, p. 786, § 1; Ga. L. 2007, p. 569, § 7/SB 115.)

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders not required. — Offenses under O.C.G.A. § 43-41-12 is not one for which those charged with a violation are to be fingerprinted. 2006 Op. Att'y Gen. No. 2006-2.

43-41-13. Issuance of restraining order and injunction to restrain against further violations.

Whenever it appears to the board or either division of the board that any person, whether an individual or a business organization, or both, is violating any of the provisions of this chapter or of the rules and regulations of the board or either division promulgated under this chapter, the board or division may apply to the superior court of the county in which such individual resides or business is located for a restraining order and injunction to restrain the violation, and the superior court shall have jurisdiction to grant the requested relief, irrespective of whether criminal prosecution has been instituted or administrative sanctions have been imposed by reason of the violation. (Code 1981, § 43-41-13, enacted by Ga. L. 2004, p. 786, § 1.)

43-41-14. Role of building inspectors; penalty for noncompliance with chapter; posting of requirements.

(a) Any person, whether an individual or a business organization acting through a qualifying agent, intending to perform work as a residential or general contractor, upon making application to the building inspector or such other authority of any incorporated municipality or county in this state charged with the duty of issuing building or other permits for contemplated construction work requiring performance by either a licensed residential contractor or a licensed general contractor shall, before being entitled to the issuance of such permit, furnish to such inspector or authority, personally or through his or her authorized agent specifically designated to act on his or her behalf in a sworn written document submitted contemporaneously or previously submitted and maintained by such inspector or authority, his or her residential contractor or general contractor license number and the identity of any business organization for which such applicant is serving as qualifying agent that is undertaking or contracting as a residential contractor or a general contractor to construct or manage the construction. It shall be unlawful for any such building inspector or other authority to issue or allow the issuance of such building permit unless the applicant has furnished his or her residential contractor or general contractor license number and the identity of any such business organization relative to performance of the work for which a permit has been applied. A building inspector or other authority shall issue such building permit under the terms of this Code section to any person, including an individual licensee acting on his or her own behalf or a licensee acting as a qualifying agent for a business organization and such business organization, upon evidence reasonably establishing that such person is duly licensed as a residential or general contractor under this chapter, either individually or as a business organization acting

under a duly licensed qualifying agent. Any building inspector or other such authority that issues a building permit to a person known by such building inspector or authority not to be properly licensed under this chapter shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than \$500.00.

(b) The licensing requirements imposed by this chapter and the effective dates of such licensing requirements must be posted by any county or municipality in this state charged with the duty of issuing building or other permits for construction work requiring performance by either a licensed residential contractor or a licensed general contractor in the same location in which such building or other permits are issued. (Code 1981, § 43-41-14, enacted by Ga. L. 2004, p. 786, § 1; Ga. L. 2007, p. 569, § 8/SB 115.)

JUDICIAL DECISIONS

Preliminary injunction improper.

— Superior court erred in granting contractors a preliminary injunction restraining the Georgia State Licensing Board for Residential and General Contractors and a county from enforcing a licensing law, O.C.G.A. § 43-41-1 et seq., because: (1) harm did not flow to the contractors from any failure on the part of the county to comply with notice of the licensing law pursuant to O.C.G.A. § 43-41-14(b) or to provide other specific notice of the licensing law going into effect since the lack of notice did not result in the contractors' consequent failure to comply with the law and thereby obtain an exemption under O.C.G.A. § 43-41-17(a); (2) the grant of the preliminary injunction operated oppressively on the rights of the county and the Board and also on the rights of the

citizens of the state since the injunction effectively enjoined, without an apparent valid basis, the operation of a licensing law; and (3) the refusal to grant the requested injunction would not work irreparable injury to the contractors or leave the contractors without remedy in the event the contractors ultimately prevailed in the contractors' challenge to the licensing law; § 43-41-14(b) became effective on May 29, 2007, approximately a month before the July 1, 2007 deadline for filing an application for examination exemption, and under that general statute the contractors were charged with notice of the licensing law including the time-limited provision allowing examination exemption. *Ga. State Licensing Bd. for Residential & Gen. Contrs. v. Allen*, 286 Ga. 811, 692 S.E.2d 343 (2010).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders not required. — An offense under O.C.G.A. § 43-41-14 is not one for which those

charged with a violation are to be fingerprinted. 2006 Op. Att'y Gen. No. 2006-2.

43-41-15. Death of contractor; notifications; completion of work.

If an incomplete contract exists at the time of death of a residential or general contractor, where the licensed contractor performing the work under such contract is an individual person and not a business organization acting through a qualifying agent for such organization, the contract may be completed by any person affiliated with the

contractor as a co-owner, partner, employee, relative, heir, successor, or assign, even though not licensed under this chapter, subject to the terms of this Code section. Such person shall notify the appropriate division of the board within 30 days after the death of such contractor of such death and of his or her name and address, knowledge of the contract, and ability technically and financially to complete it. Such person may continue with performance of the contract pending approval by the division. If the division approves, he or she may proceed with the contract to completion. If the division does not approve completion by such person, due to a determination that he or she does not have sufficient knowledge, expertise, or financial or other required resources, the division shall give prompt written notice to the person, including the reasons for such rejection, and such person shall promptly upon receipt of such notice cease further performance of the contract. If the owner engages another person under a new contract to complete the remaining work under the original contract, such other party must be a contractor duly licensed under this chapter to perform such work. For purposes of this Code section, an incomplete contract is one which has been awarded to or entered into by the contractor before his or her death or on which he or she was the low bidder and the contract is subsequently awarded to him or her, regardless of whether any actual work has commenced under the contract before the contractor's death. If an incomplete contract exists at the time of death of a sole qualifying agent of a residential contractor or a general contractor, where the contractor is a business organization licensed only under such individual as its qualifying agent, then the contractor shall proceed as provided under paragraph (1) of subsection (e) of Code Section 43-41-9. (Code 1981, § 43-41-15, enacted by Ga. L. 2004, p. 786, § 1.)

43-41-16. Grounds for revocation of license; authorized action by division in event of wrongdoing; interest and penalties; continuing education as requirement for resumption of standing.

(a) The board shall have the authority to refuse to grant a license to an applicant or to revoke the license of a person licensed by the board or to discipline a person licensed by the board upon a finding by a majority of the board that the applicant or licensee has committed any of the following acts:

- (1) Obtaining a license by fraud or misrepresentation or otherwise knowingly giving false or forged evidence to the board or its divisions;
- (2) Being convicted or found guilty of or entering a plea of guilty or nolo contendere to a criminal act constituting a felony in any jurisdiction which directly relates to the practice of residential or general contracting or the ability to practice contracting;

(3) Performing any act which assists a person or entity in the prohibited unlicensed practice of contracting if the licensee knows or has reasonable grounds to know that the person or entity is unlicensed;

(4) Knowingly combining or conspiring with an unlicensed person by allowing his or her license to be used with the intent to evade the provisions of this chapter. When an individual license holder allows his or her license to be used to qualify one or more business organizations, including where such qualifying agent for a person engaged in general contracting does not actually possess and exercise the power and authority required of a qualifying agent under paragraph (7) of Code Section 43-41-2 and Code Section 43-41-9, such act constitutes prima-facie evidence of an intent to evade the provisions of this chapter;

(5) Failing in any material respect to comply with the provisions of this chapter or violating a rule, regulation, or lawful order of the board or its divisions;

(6) Abandoning a construction project in which the contractor who is the individual license holder or a business organization for whom the license holder is a qualifying agent is engaged or under contract as a residential or general contractor. A project may be presumed abandoned after 90 days if the contractor has ceased work on or terminated performance on the project without just cause and without proper notification to the owner, including the reason for the termination, cessation, or abandonment;

(7) Signing a statement with respect to a project or contract falsely indicating that the work is bonded; knowingly and falsely indicating by written statement issued to the owner that payment has been made for all subcontracted work, labor, and materials and for all materials furnished and installed which statement is reasonably relied upon and actually results in a financial loss to the owner; or falsely indicating that workers' compensation and general liability insurance are provided;

(8) Committing fraud or deceit in the practice of contracting, including falsely advertising, representing, or holding himself or herself or an affiliated business organization out as having a valid and current license under this chapter;

(9) Committing gross negligence, repeated or persistent negligence, or negligence resulting in a significant danger to life or property;

(10) Proceeding on any job without obtaining applicable local building permits and inspections;

(11) Using or attempting to use a license that has expired or has been suspended or revoked;

(12) Knowingly or intentionally engaging any subcontractor to perform work within the scope of the general or residential construction contract which requires a license under Chapter 14 of this title who does not possess a current and valid license for such work; or

(13) Failing to satisfy within a reasonable time the terms of a final civil judgment obtained against the licensee or the business organization qualified by the licensee relating to the practice of the licensee's profession.

(b) The appropriate division may take any one or more of the following actions against any license holder found by the division to have committed any one or more of the acts listed in subsection (a) of this Code section:

(1) Place the license holder on probation or reprimand the license holder;

(2) Revoke a license, including the license of a person as an individual as well as that of a qualifying agent of a business organization together with the interest of the business organization qualified thereby in such license; suspend such a license for a stated period of time not exceeding one year; or deny the issuance or renewal of the license;

(3) Require financial restitution to a consumer for financial harm directly related to a violation of a provision of this chapter;

(4) Impose an administrative fine not to exceed \$5,000.00 for each violation;

(5) Require continuing education; or

(6) Assess costs associated with the investigation and prosecution.

(c) In determining penalties in any final order of the board or a division, the board or division shall follow the penalty guidelines established by the board's or division's rules and regulations.

(d) The board or a division may assess interest or penalties on all fines imposed under this chapter against any person or business organization which has not paid the imposed fine by the due date established by rule, regulation, or final order.

(e) If the board or a division finds any contractor has violated the provisions of this chapter, the board or division may as a part of its disciplinary action require such contractor to obtain continuing education in the areas of contracting affected by such violation. (Code 1981, § 43-41-16, enacted by Ga. L. 2004, p. 786, § 1.)

43-41-17. Effective date of licensing and sanctioning provisions; unenforceable contracts; compliance with county or municipal requirements; exemption for DOT contractors; other exceptions.

(a) The licensing requirements imposed by this chapter and the sanctions and consequences relating thereto shall not become effective and enforceable until July 1, 2008. On and after such date, no person, whether an individual or a business organization, shall have the right to engage in the business of residential contracting or general contracting without a current, valid residential contractor license or general contractor license, respectively, issued by the division under this chapter or, in the case of a business organization, unless such business organization shall have a qualifying agent as provided in this chapter holding such a current, valid residential contractor or general contractor license on behalf of such organization issued to such qualifying agent as provided in this chapter. Notwithstanding the foregoing, persons seeking licensure under this chapter and exemption from examination under paragraphs (1) and (2) of subsection (a) of Code Section 43-41-8 shall submit their applications, including all necessary proof of the basis of exemption from examination for such license, starting January 1, 2006. The period for submission of such applications and requests for exemption from the examination requirements shall extend thereafter for a period of 18 months. Furthermore, notwithstanding the foregoing, any person seeking licensure under this chapter and exemption from examination under paragraph (3) of subsection (a) of Code Section 43-41-8 may submit his or her application, including all necessary proof of the basis of such exemption starting January 1, 2007, and continuing thereafter.

(b) As a matter of public policy, any contract entered into on or after July 1, 2008, for the performance of work for which a residential contractor or general contractor license is required by this chapter and not otherwise exempted under this chapter and which is between an owner and a contractor who does not have a valid and current license required for such work in accordance with this chapter shall be unenforceable in law or in equity by the unlicensed contractor. For purposes of this subsection, a contractor shall be considered unlicensed only if the contractor was unlicensed on the effective date of the original contract for the work, if stated therein, or, if not stated, the date the last party to the contract executed such contract, if stated therein. If the contract does not establish such a date, the contractor shall be considered unlicensed only if the contractor was unlicensed on the first date upon which the contractor provided labor, services, or materials under the contract. Notwithstanding any other provision of law to the contrary, if a contract is rendered unenforceable under this subsection, no

lien or bond claim shall exist in favor of the unlicensed contractor for any labor, services, or materials provided under the contract or any amendment thereto. This subsection shall not affect the rights of parties other than the unlicensed contractor to enforce contract, lien, or bond remedies. This subsection shall not affect the obligations of a surety that has provided a bond on behalf of an unlicensed contractor. It shall not be a defense to any claim on a bond or indemnity agreement that the principal or indemnitee is unlicensed for purposes of this subsection.

(c) Any person who holds a license issued under this chapter may engage in the business of residential or general contracting, but only as prescribed by the license, throughout the state and no municipality or county may require any such person licensed under this chapter to comply with any additional licensing requirements imposed by such municipality or county relative to the performance of construction work subject to the licensing requirements under this chapter. However, nothing in this chapter shall preclude the implementation and enforcement by any municipality or county of a local rule, regulation, ordinance, order, or other requirement in effect and operation as of July 1, 2004, that requires a person to obtain a locally issued license, registration, or certification in order to:

(1) Engage in the construction of improvements to real property to the extent such activities are not encompassed by this chapter or by Chapter 14 of this title; or

(2) Engage in residential or general contracting within such jurisdiction; provided, however, that:

(A) The requirements and criteria for issuance of such local license, registration, or certification shall have been at least as strict and stringent, in the sole judgment of the board, as those for the issuance of a corresponding state-wide license issued under this chapter;

(B) Such local license, registration, or certification shall only apply to activities performed within the geographical limits of such municipality or county; and

(C) Such requirement shall not prevent or foreclose any contractor not holding such local license, registration, or certification but holding a valid and current state-wide license issued under this chapter or Chapter 14 of this title from the transaction of contracting business in such local jurisdiction within the scope of his or her state-wide license.

(d) Any person qualified by the Department of Transportation to perform construction work on roads, streets, bridges, highways, side-

walks, or other grading, paving, or repaving projects; airport runways or taxiways; or railroads, and services incidental thereto, for the department shall not be required to be licensed under this chapter in order to perform any such work for the department or for any other owner requiring similar work to be performed. The general contractor division of the board, in agreement with the Department of Transportation, shall, by rule, define "services incidental thereto" for the purposes of this subsection only and shall likewise define any other necessary terms as to the scope of the exemption provided by this subsection.

(e) Nothing in this chapter shall prevent any person holding a valid license issued by the State Construction Industry Licensing Board, or any division thereof, pursuant to Chapter 14 of this title from performing any work defined in the Code sections under which the license held by said person was issued. Furthermore, nothing in this chapter shall preclude a person licensed under Chapter 14 of this title to perform plumbing, conditioned air contracting, utility contracting, electrical contracting, or low-voltage contracting from offering to perform, performing, engaging in, or contracting to engage in the performance of construction work or services directly with an owner, which work would otherwise require a license under this chapter, where the total scope of the work to be performed is predominantly of the type for which such contractor is duly licensed to perform under Chapter 14 of this title such that any other work involved is incidental to and an integral part of the work performed within the scope of such license under said chapter and does not exceed the greater of \$10,000.00 or 25 percent of the total value at the time of contracting of the work to be performed; provided, however, that such contractor may not delegate or assign the responsibility to directly supervise and manage the performance of such other work to a person unless such person is licensed under this chapter and the work being performed by such person is within the scope of that person's license.

(f) Nothing in this chapter shall preclude a specialty contractor from offering or contracting to perform or undertaking or performing for an owner limited, specialty, or specific trade contractor work. However, nothing in this chapter shall permit a specialty contractor to perform work falling within the licensing requirements of Chapter 14 of this title where such specialty contractor is not duly licensed under such chapter to perform such work. The board shall by rule or policy by January 1, 2008, identify specialty contractors or other criteria to determine eligibility under the exemption of this subsection. The specialty contractor otherwise exempted from license requirements under this chapter may perform work for an owner that would otherwise require a license under this chapter where the total scope of the work to be performed is predominantly of the type for which such

specialty contractor is duly recognized as exempt under this subsection by the board, provided that such other work involved is incidental to and an integral part of the exempt work performed by the specialty contractor and does not exceed the greater of \$10,000.00 or 25 percent of the total value at the time of contracting of the work to be performed.

(g) Nothing in this chapter shall preclude a person from offering or contracting to perform or undertaking or performing for an owner repair work, provided that the person performing the repair work discloses to the owner that such person does not hold a license under this chapter and provided, further, that such work does not affect the structural integrity of the real property. The board shall by rule or regulation further define the term "repair" as used in this subsection and any other necessary terms as to the scope of this exemption.

(h) Nothing in this chapter shall preclude any person from constructing a building or structure on real property owned by such person which is intended upon completion for use or occupancy solely by that person and his or her family, firm, or corporation and its employees, and not for use by the general public and not offered for sale or lease. In so doing, such person may act as his or her own contractor personally providing direct supervision and management of all work not performed by licensed contractors. However, if, under this subsection, the person or his or her family, firm, or corporation has previously sold or transferred a building or structure which had been constructed by such person acting without a licensed residential or general contractor within the prior 24 month period, starting from the date on which a certificate of occupancy was issued for such building or structure, then such person may not, under this subsection, construct another separate building or structure without having first obtained on his or her own behalf an appropriate residential or general contractor license or having engaged such a duly licensed contractor to perform such work to the extent required under this chapter, or it shall be presumed that the person, firm, or corporation did not intend such building solely for occupancy by that person and his or her family, firm, or corporation. Further, such person may not delegate the responsibility to directly supervise and manage all or any part of the work relating thereto to any other person unless that person is licensed under this chapter and the work being performed is within the scope of that person's license. In any event, however, all such work must be done in conformity with all other applicable provisions of this title, the rules and regulations of the board and division involved, and any applicable county or municipal resolutions, ordinances, codes, permitting, or inspection requirements.

(i) Nothing in this chapter shall preclude an architect licensed pursuant to Chapter 4 of this title, an interior designer registered pursuant to Chapter 4 of this title, or an engineer registered pursuant

to Chapter 15 of this title from performing work or providing services within the scope of his or her registration for the practice of architecture or interior design or license for practicing engineering.

(j) Nothing in this chapter shall preclude an architect licensed pursuant to Chapter 4 of this title, an interior designer registered pursuant to Chapter 4 of this title, or an engineer registered pursuant to Chapter 15 of this title from offering to perform or offering or rendering design-build services to an owner; provided, however, that such offer or contract shall clearly indicate at the time of such offer or contract that all services of a general contractor incident to the design-build performance shall be performed by a duly licensed general contractor in compliance with other provisions of this chapter and that all services so offered or provided falling within the scope of the licensing requirements of this chapter are offered and rendered by a licensed general contractor in accordance with this chapter.

(k) Nothing in this chapter shall apply to the construction, alteration, or repair of buildings classified as an agricultural occupancy or that are used for agricultural storage or agricultural purposes.

(l) A contractor licensed under this chapter shall not be required to list on the face of a bid or proposal envelope the license number of any contractor licensed under Chapter 14 of this title that may or will be engaged to perform any work within the licensing requirements of Chapter 14 of this title which comprises part of the work for which such bid or proposal is submitted.

(m) Dams, including both earth dams and concrete dams, designed for electrical generation, water storage, or any other purpose may be constructed by either a general contractor licensed under this chapter or by a utility contractor licensed pursuant to Chapter 14 of this title.

(n) Nothing in this chapter shall apply to the construction or installation of manufactured homes as defined in paragraph (4) of Code Section 8-2-131. (Code 1981, § 43-41-17, enacted by Ga. L. 2004, p. 786, § 1; Ga. L. 2005, p. 1179, § 3/SB 124; Ga. L. 2006, p. 272, § 2/HB 1542; Ga. L. 2007, p. 569, § 9/SB 115; Ga. L. 2008, p. 324, § 43/SB 455.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2007, in subsection (f), a period was inserted at the end of the first sentence, a comma was inserted following “2008” in the third sentence, and

“predominantly” was substituted for “predominately” in the last sentence.

Law reviews. — For annual survey of law on administrative law, see 62 Mercer L. Rev. 1 (2010).

JUDICIAL DECISIONS

Preliminary injunction improper. — Superior court erred in granting contractors a preliminary injunction restrain-

ing the Georgia State Licensing Board for Residential and General Contractors and a county from enforcing a licensing law,

O.C.G.A. § 43-41-1 et seq., because: (1) harm did not flow to the contractors from any failure on the part of the county to comply with notice of the licensing law pursuant to O.C.G.A. § 43-41-14(b) or to provide other specific notice of the licensing law going into effect since the lack of notice did not result in the contractors' consequent failure to comply with the law and thereby obtain an exemption under O.C.G.A. § 43-41-17(a); (2) the grant of the preliminary injunction operated oppressively on the rights of the county and the Board and also on the rights of the citizens of the state since the injunction effectively enjoined, without an apparent valid basis, the operation of a licensing

law; and (3) the refusal to grant the requested injunction would not work irreparable injury to the contractors or leave the contractors without remedy in the event the contractors ultimately prevailed in the contractors' challenge to the licensing law; § 43-41-14(b) became effective on May 29, 2007, approximately a month before the July 1, 2007 deadline for filing an application for examination exemption, and under that general statute the contractors were charged with notice of the licensing law including the time-limited provision allowing examination exemption. Ga. State Licensing Bd. for Residential & Gen. Contrs. v. Allen, 286 Ga. 811, 692 S.E.2d 343 (2010).

CHAPTER 42

REGISTERED PROFESSIONAL SANITARIANS

43-42-1 through 43-42-14.

Repealed effective June 30, 1987, pursuant to termination provisions of Code Section 43-42-14.

Editor's notes. — As provided in Code Section 43-42-14, the Georgia Board of Registered Professional Sanitarians was terminated on July 1, 1986. As provided in former Code Section 43-2-8, the chapter was continued in effect for the duration of the termination period only for the purpose of concluding the affairs of the board and was repealed as of the last day of the termination period (June 30, 1987). Code Section 43-42-4 had previously been repealed by Ga. L. 1982, p. 1644, § 3, effective November 1, 1982.

Code Sections 43-42-1 through 43-42-13

were based on Ga. L. 1957, p. 219, §§ 1, 3 through 8, 10, 12, and 13; Ga. L. 1973, p. 554, § 1; Ga. L. 1975, p. 801, § 1; Ga. L. 1977, p. 1108, §§ 1, 3 through 10, and 12; Ga. L. 1980, p. 1459, §§ 2, 2.1, 3, and 4; Ga. L. 1982, p. 3, § 43; Ga. L. 1982, p. 798, §§ 1 and 2; Ga. L. 1982, p. 1644, §§ 1, 2, and 4; Ga. L. 1983, p. 3, § 32; Ga. L. 1984, p. 425, § 1; and Ga. L. 1984, p. 647, § 1.

Code Section 43-42-14 was created as part of the Code revision and was thus enacted by Ga. L. 1981, Ex. Sess., p. 8 (Code Enactment Act).

CHAPTER 43

SCRAP METAL PROCESSORS

Sec.		Sec.	
43-43-1.	Definitions.		Department of Revenue upon receipt.
43-43-2.	Maintenance of records required; contents; term.	43-43-4.	Local laws as cumulative to this chapter.
43-43-3.	Vehicle certificate of title or license plate to be transmitted to	43-43-5.	Penalties.

Cross references. — Motor vehicle chop shops, T. 16, C. 8, A. 4. Restrictions on location of junkyards, and screening and fencing requirements for junkyards, § 32-6-240 et seq. Junk dealers, T. 43, C. 22.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

43-43-1. Definitions.

As used in this chapter, the term:

- (1) "Licensed seller" means any person, firm, or corporation licensed by a state board of registration in this state for salvage dealers, dismantlers, or rebuilders which may be in existence as of July 1, 1981, or which may be created thereafter.
- (2) "Scrap metal processor" means any person, firm, or corporation which is engaged in the business of buying scrap vehicles, automotive parts, or other metallic waste by weight to process such material into scrap metal for remelting purposes; which utilizes machinery and equipment for processing ferrous and nonferrous metallic scrap into prepared grades; and whose principal product is metallic scrap.
- (3) "Scrap vehicle" means any vehicle which has been crushed or flattened by mechanical means or which has been otherwise damaged

to the extent that it cannot economically be repaired or made roadworthy. (Ga. L. 1981, p. 973, § 1.)

43-43-2. Maintenance of records required; contents; term.

(a) Every scrap metal processor shall maintain records which shall contain in legible English the following information:

(1) For all purchases of vehicles or scrap vehicles from licensed sellers:

(A) The date of purchase;

(B) The name of the seller;

(C) A general description of the purchase;

(D) The number of scrap vehicles purchased;

(E) The vehicle identification number of vehicles which are not scrap vehicles, if available; or, if not available, a notation of the make and year of such vehicles; and

(F) The amount paid for the purchase; and

(2) For all purchases of vehicles or scrap vehicles from nonresident sellers or sellers who are not licensed:

(A) The date of purchase;

(B) The name and address of the seller;

(C) The name and motor vehicle operator's license number of the driver delivering the material;

(D) A general description of the purchase;

(E) The number of scrap vehicles purchased;

(F) The vehicle identification number, if available, of vehicles purchased which are not scrap vehicles; or, if not available, a notation of the make and year of such vehicles; and

(G) The amount paid for the purchase.

(b) The records required by this Code section shall be maintained for a period of not less than two years.

(c) The records required by this Code section shall be open to the inspection of any duly authorized law enforcement officer during the ordinary hours of business. (Ga. L. 1981, p. 973, §§ 2, 3, 6.)

Cross references. — Further provisions regarding maintenance of records by persons purchasing used motor vehicles or parts, § 40-4-40 et seq.

RESEARCH REFERENCES

C.J.S. — 53 C.J.S., Licenses, §§ 58, 59.

43-43-3. Vehicle certificate of title or license plate to be transmitted to Department of Revenue upon receipt.

Should a scrap metal processor be presented the certificate of title or vehicle license plate for any vehicle or scrap vehicle purchased, that scrap metal processor shall mail or deliver the same to the Department of Revenue as required by law. In lieu of a certificate of title, an affidavit in accordance with the provisions of subsection (a) of Code Section 40-3-36 shall be obtained by a scrap metal processor. All other requirements of subsection (a) of Code Section 40-3-36 shall be complied with, including maintenance of a copy of such affidavit, and any other rules promulgated pursuant thereto. (Ga. L. 1981, p. 973, § 4; Ga. L. 2002, p. 415, § 43; Ga. L. 2005, p. 980, § 25-3/HB 501; Ga. L. 2007, p. 585, § 2/HB 171.)

Cross references. — Motor vehicle chop shops, T. 16, C. 8, A. 4. Further provisions regarding disposition of certificate of title for scrapped, dismantled, or destroyed vehicles or wreckage or salvage, § 40-3-35.

43-43-4. Local laws as cumulative to this chapter.

Nothing in this chapter shall supersede existing local laws or relieve a scrap metal processor from the necessity of complying with them. The requirements of local laws shall be construed as cumulative of this chapter. (Ga. L. 1981, p. 973, § 7.)

43-43-5. Penalties.

Any scrap metal processor or his agent who:

- (1) Fails to make an entry of any material matter in his records;
- (2) Makes any false entry therein;
- (3) Falsifies, obliterates, destroys, or removes from his place of business such records;
- (4) Refuses to allow any duly authorized law enforcement officer to inspect such records or any vehicles or scrap vehicles in his possession during the ordinary hours of business; or
- (5) Fails to maintain the records required by Code Section 43-43-2 for at least two years

shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$1,000.00. (Ga. L. 1981, p. 973, § 5.)

CHAPTER 43A

SNOW SKIING SAFETY

Sec.

43-43A-1. Definitions.

43-43A-2. Use of passenger tramway; passenger rules.

43-43A-3. Sign system; inspection; explanation of signs and symbols; warning signs; degree of difficulty signs.

43-43A-4. Warning notice.

Sec.

43-43A-5. Motorized snow grooming vehicles; requirements.

43-43A-6. Revocation of skiing privileges.

43-43A-7. Duties and responsibilities of each skier; assumption of risk.

43-43A-8. Visual inspections; assumption of risk.

Cross references. — Owners of property used for recreational purposes, T. 51, C. 3, A. 2.

RESEARCH REFERENCES

Am. Jur. 2d. — 27A Am. Jur. 2d, Entertainment and Sports Law, § 82.

62 Am. Jur. 2d, Premises Liability, §§ 141, 146.

C.J.S. — 13 C.J.S., Carriers, § 515.

30A C.J.S., Entertainment and Amusement, § 93.

43-43A-1. Definitions.

As used in this chapter, the term:

(1) "Base area lift" means a passenger tramway to gain access to some other part of the ski area.

(2) "Competitor" means a skier engaging in competition or preparing for competition on a slope or trail designated by the ski area or used by the skier for the purpose of competition or training for competition.

(3) "Conditions of ordinary visibility" means all periods of daylight, and, when visibility is not restricted by weather or other atmospheric conditions, nighttime.

(4) "Inherent dangers and risks of skiing" means categories of danger or risks of skiing, or conditions of the sport of skiing that cause or can cause any injury, death, or property damage, including:

(A) Changing weather conditions;

(B) Surface and subsurface snow or ice conditions as they may exist or change from time to time, including variable conditions such as hard packed powder, packed powder, wind-blown snow,

wind-packed snow, corn snow, crust slush, snow modified by skier use, or cut up snow; surface or subsurface snow or ice conditions as they exist or may change as the result of weather changes or skier use; snow created by or resulting from snow making or snow grooming operations; or collisions or falls resulting from such conditions;

(C) Surface or subsurface conditions other than those specified in subparagraph (B) of this paragraph, including dirt, grass, rocks, trees, stumps, other forms of forest or vegetative growth, stream beds, or other natural objects or debris; or collisions or falls resulting from such conditions;

(D) Collisions with: lift towers; components of lift towers; signs, posts, fences, mazes, or other enclosure devices; hydrants, pipes, or any other portions of snow making or snow delivery systems; snow grooming equipment or other over-snow vehicles marked or lighted as required by this chapter; or collisions with or falls resulting from any such structures or any other manmade structures or their components;

(E) Variations in surface, contour, or steepness of terrain, including, but not limited to, moguls, ski jumps, roads, depressions, water bars, and cat walks; other terrain changes or modifications which occur naturally or result from slope design or construction, snow making, snow grooming, maintenance operations, or skier use; or collisions with or falls resulting from such variations; and

(F) Collisions with other skiers unless such collisions are caused by the failure on the part of other skiers to conduct themselves in accordance with the provisions of this chapter.

(5) "Passenger" means a person who is lawfully being transported by a passenger tramway.

(6) "Passenger tramway" means any mechanical device used to transport passengers uphill, but such term does not include over-snow vehicles.

(7) "Ski area" means all snow ski slopes or trails and other places under the control of a ski area operator at a defined business location within this state.

(8) "Ski area operator" means an individual, partnership, corporation, or other commercial entity who owns, manages, or otherwise directs or has operational responsibility for any ski area.

(9) "Ski slopes or trails" means those areas open to the skiing public and designated by the ski area operator to be used by a skier. The designation may be generally set forth on trail maps and further

designated by signage posted to indicate to the skiing public the intent that the areas be used by the skier for the purpose of skiing. Nothing in this paragraph implies that ski slopes or trails may not be restricted for use at the discretion of the ski area operator.

(10) "Skier" means any person who uses any part of a ski area for the purpose of skiing, snowboard skiing, or sliding or moving on any device other than a motorized device or any person except a passenger who uses any of the facilities of the ski area, including the ski slopes and trails.

(11) "Surface lift" means any passenger tramway that allows the skier's sliding equipment to stay in contact with the skier and the snow during all of the uphill transportation. (Code 1981, § 43-43A-1, enacted by Ga. L. 2000, p. 1190, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, the definitions in this Code section were arranged in alphabetical order.

43-43A-2. Use of passenger tramway; passenger rules.

(a) No passenger shall use a passenger tramway if the passenger does not have sufficient knowledge, ability, or physical dexterity to negotiate or use the facility safely unless and until the passenger has asked for and received information sufficient to enable the passenger to use the equipment safely. A passenger is required to follow any written, verbal, or other instructions that are given by ski area personnel regarding the use of the passenger tramway.

(b) No passenger shall:

(1) Attempt to enter, use, exit, or leave a passenger tramway except at a location designated by ski area signage for that purpose, except that, in the event of a stoppage of the passenger tramway, a passenger may exit under the supervision and direction of the operator or its representatives, or, in the event of an emergency, a passenger may exit in order to prevent an injury to the passenger or others;

(2) Throw, drop, or release any object from a passenger tramway except as directed by the operator or its representatives;

(3) Act in any manner that may interfere with the proper or safe operation of the passenger tramway or cause any risk, harm, or injury to any person;

(4) Place in an uphill track of any surface lift any object that may cause damage to property or injury to any person;

(5) Use or attempt to use any passenger tramway marked as closed; or

(6) Disobey any instructions posted in accordance with this chapter or any verbal or other instructions of the ski area operator or its lawful designee regarding the use of passenger tramways. (Code 1981, § 43-43A-2, enacted by Ga. L. 2000, p. 1190, § 1.)

43-43A-3. Sign system; inspection; explanation of signs and symbols; warning signs; degree of difficulty signs.

(a) Each ski area operator shall maintain a sign system with information for the instruction of passengers and skiers. Signs must be in English and visible in conditions of ordinary visibility and, where applicable, lighted for nighttime passengers. Without limitation, the signs shall be posted:

(1) At or near the loading point of each passenger tramway, regardless of the type, advising all persons that if they are not familiar with the operation of the device, they must ask the operator of the device for assistance and instructions and that they must understand such instructions before they attempt to use the passenger tramway; and

(2) At or near the boarding area of each lift, setting forth the warning regarding inherent dangers and risks and duties as provided in this chapter.

(b) The ski area operator, before opening a passenger tramway to the public each day, shall inspect the passenger tramway for the presence and visibility of all required signs.

(c) The ski area operator shall post a sign visible to skiers who are proceeding to the uphill loading point of each base area lift which shall depict and explain the following signs and symbols that a skier may encounter at the ski area:

(1) A green circle and the word "easier" designating the ski area's least difficult trails and slopes;

(2) A blue square and the words "more difficult" designating the ski area's trails and slopes that have a degree of difficulty that lies between the least difficult and most difficult trails and slopes;

(3) A black diamond and the words "most difficult" designating the ski area's most difficult trails and slopes;

(4) Two black diamonds and the words "most difficult" designating a slope or trail which meets the description of "most difficult" but which is particularly challenging; and

(5) Crossed poles or other images clearly indicating that a trail or slope is closed and may not be used by skiers.

(d) If applicable, a warning sign shall be placed at or near the loading point of a passenger tramway indicating that it provides access to only "most difficult" or "more difficult" slopes or trails.

(e) The ski area operator shall place a sign at or near the beginning of each trail or slope indicating the relative degree of difficulty of that particular trail or slope. (Code 1981, § 43-43A-3, enacted by Ga. L. 2000, p. 1190, § 1.)

43-43A-4. Warning notice.

(a) The ski area operator shall post and maintain signs that contain the following warning notice:

"WARNING: Under Georgia law, every skier accepts the risk of any injury or death and damage to property resulting from any of the inherent dangers or risks of skiing. The inherent dangers or risks of skiing, or conditions of the sport of skiing that cause or can cause injury, death, or property damage, include:

(1) Changing weather conditions;

(2) Surface and subsurface snow or ice conditions as they may exist or change from time to time, including variable conditions such as hard packed powder, packed powder, wind-blown snow, wind-packed snow, corn snow, crust slush, snow modified by skier use, or cut up snow; surface or subsurface snow or ice conditions as they exist or may change as the result of weather changes or skier use; snow created by or resulting from snow making or snow grooming operations; or collisions or falls resulting from such conditions;

(3) Surface or subsurface conditions other than those specified in paragraph (2), including dirt, grass, rocks, trees, stumps, other forms of forest or vegetative growth, stream beds, or other natural objects or debris; or collisions or falls resulting from such conditions;

(4) Collisions with: lift towers; components of lift towers; signs, posts, fences, mazes, or other enclosure devices; hydrants, pipes, or any other portions of snow making or snow delivery systems; snow grooming equipment or other over-snow vehicles marked or lighted as required by this chapter; or collisions with or falls resulting from any such structures or any other manmade structures or their components;

(5) Variations in surface, contour, or steepness of terrain, including, but not limited to, moguls, ski jumps, roads, depressions, water bars, and cat walks; other terrain changes or modifications which

occur naturally or result from slope design or construction, snow making, snow grooming, maintenance operations, or skier use; or collisions with or falls resulting from such variations; and

(6) Collisions with other skiers.”

(b) A warning sign as described in subsection (a) of this Code section shall be placed:

(1) At the ski area in the location where lift tickets or ski school lessons are sold;

(2) In the vicinity of the uphill loading point of each base area lift; and

(3) At such other places as the ski area operator may select.

(c) Each sign required by subsection (a) of this Code section shall be no smaller than 3 feet by 3 feet and shall be white or yellow with black and red letters as specified in this subsection. The word “WARNING” shall appear on the sign in red letters. The warning notice specified in subsection (a) of this Code section shall appear on the sign in black letters with each letter being a minimum of one inch in height.

(d) Every passenger tramway ticket sold may contain the warning notice specified in subsection (a) of this Code section. (Code 1981, § 43-43A-4, enacted by Ga. L. 2000, p. 1190, § 1; Ga. L. 2002, p. 415, § 43.)

43-43A-5. Motorized snow grooming vehicles; requirements.

(a) Any motorized snow grooming vehicle shall be equipped with at least a flashing or rotating light which shall be in operation whenever the vehicle is being operated on a ski slope or trail.

(b) While snow grooming vehicles are being used to maintain or groom any ski slope or trail while that slope or trail is open to the public, the ski operator shall place or cause to be placed a conspicuous sign or notice that warns of that activity at or near the top of that ski slope or trail or in the area of the off loading ramp of any lift servicing that ski slope or trail.

(c) All snowmobiles or other over-snow vehicles, other than snow grooming vehicles, that are being operated on the ski slopes or trails shall be equipped with at least the following:

(1) One lighted headlight;

(2) One lighted red taillight;

(3) A brake system maintained in operable condition; and

(4) A flag of at least 40 square inches mounted at least six feet above the bottom of the tracks of the vehicle. (Code 1981, § 43-43A-5, enacted by Ga. L. 2000, p. 1190, § 1.)

43-43A-6. Revocation of skiing privileges.

Each ski area operator, upon finding a person skiing in violation of any posted regulations governing skiing conduct, may revoke that person's skiing privileges. This Code section shall not in any way be construed to create an affirmative duty on the part of the ski area operator to protect skiers from their own or other skiers' careless or reckless behavior, including any skier's violation of any duties set forth in this chapter. (Code 1981, § 43-43A-6, enacted by Ga. L. 2000, p. 1190, § 1.)

43-43A-7. Duties and responsibilities of each skier; assumption of risk.

Any other provision of law to the contrary notwithstanding:

(1) Each individual skier has the responsibility for knowing the range of his or her own ability to negotiate any ski slope or trail or any portion thereof and must ski within the limits of his or her ability. Each skier expressly accepts and assumes the risk of any injury or death or damage to property resulting from any of the inherent dangers and risks of skiing, as set forth in this chapter; provided, however, that injuries sustained in a collision with another skier are not an inherent risk of the sport for purposes of this Code section;

(2) Each skier has the duty to maintain control of his or her speed and course at all times and to maintain a proper lookout so as to be able to avoid other skiers and objects, natural or manmade. The skier shall have the primary duty to avoid colliding with any persons or objects below him or her on the trail;

(3) No skier shall ski on a ski slope or trail that has been posted as closed in accordance with the provisions of this chapter;

(4) Each skier shall stay clear of all snow grooming or snow making equipment, vehicles, lift towers, signs, and any other equipment at the ski area;

(5) Each skier shall obey all posted information, warnings, and requirements and shall refrain from acting in any manner that might cause or contribute to the injury of the skier or any other person. Each skier shall be charged with having seen and understood all information posted as required or permitted in this chapter. Each skier shall locate and ascertain the meaning of all signs posted in accordance with this chapter;

(6) Each sliding device used by a skier shall be equipped with a strap or other device designed to help reduce the risk of any runaway equipment should it become unattached from the skier;

(7) No skier shall cross the uphill track of any surface lift device except at locations designated by the operator, nor shall any person place any object in the uphill track of such a device;

(8) Before beginning to ski from a stationary position, or before entering a ski slope or trail, the skier shall have the duty of yielding to moving skiers already using the slope or trail;

(9) No skier shall stop where he or she obstructs a trail or is not visible from higher on the slope or trail; and

(10) No skier shall board or use or attempt to board or use any passenger tramway of any type or use any ski slope or trail while that skier's ability to do so is impaired by alcohol, drugs, or any controlled substance. (Code 1981, § 43-43A-7, enacted by Ga. L. 2000, p. 1190, § 1.)

43-43A-8. Visual inspections; assumption of risk.

(a) Any competitor may, before the start of any formal or sanctioned skiing competition, make a visual inspection of the designated course where the competition is to be held.

(b) Competitors shall be held to accept any and all risks of injury or death that result from course conditions, including, but not limited to, those inherent dangers and risks of skiing as defined in this chapter, as well as existing weather or snow conditions; course design, construction, or layout; or obstacles that a visual inspection prior to any training for or the start of the actual competitive event would have revealed. (Code 1981, § 43-43A-8, enacted by Ga. L. 2000, p. 1190, § 1.)

CHAPTER 44

SPEECH-LANGUAGE PATHOLOGISTS AND
AUDIOLOGISTS

Sec.		Sec.	
43-44-1.	Short title.	43-44-10.	Issuance of license.
43-44-2.	Declaration of purpose.	43-44-10.1.	Speech-language pathology aides; determination of minimum requirements [Repealed].
43-44-3.	Definitions.	43-44-11.	Licensure in specialty; provisional and inactive licenses; renewal.
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		43-44-18.	Redesignated.

Cross references. — Liability of voluntary health care providers and sponsoring organizations; cumulative immunity; application, § 51-1-29.4.

Administrative rules and regula-

tions. — Organization, Official Compilation of the Rules and Regulations of the State of Georgia, Board of Examiners for Speech-Language Pathology and Audiology, Chapter 609-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 39 Am. Jur. 2d, Health, §§ 1 et seq., 25 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Employees, § 1 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et

seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 39A C.J.S., Health and Environment, §§ 3 et seq., 37 et seq., 48 et seq. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and

Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

ALR. — Failure to procure occupational

43-44-1. Short title.

This chapter shall be known and may be cited as the “Georgia State Speech-Language Pathology and Audiology Licensing Act.” (Ga. L. 1974, p. 1009, § 1; Ga. L. 1987, p. 1072, § 1; Ga. L. 2006, p. 1077, § 1/HB 1112.)

43-44-2. Declaration of purpose.

It is declared to be a policy of this state that in order to safeguard the public health, safety, and welfare and to protect the public from being misled by incompetent, unscrupulous, and unauthorized persons, it is necessary to provide regulatory authority over persons offering speech-language pathology and audiology services to the public. (Ga. L. 1974, p. 1009, § 2; Ga. L. 1987, p. 1072, § 1; Ga. L. 2006, p. 1077, § 1/HB 1112.)

43-44-3. Definitions.

As used in this chapter, the term:

(1) “Accredited program” means a program leading to the award of a degree in speech-language pathology or audiology that is accredited by an organization recognized for that purpose by the United States Department of Education or its successor and adopted by rule or regulation of the board.

(2) “Audiogram” means a graphic or tabular summary of the measurements of hearing, showing a person’s hearing threshold levels for pure tones.

(3) “Audiologist” means a person who has a degree in audiology, who is licensed to practice audiology, or both and who presents himself or herself to the public by any title or description of services incorporating the words audiologist, hearing clinician, hearing therapist, or any variation or synonym which expresses, employs, or implies these terms or functions.

(4) “Audiology assistant” means any person who assists in the providing of those audiology services authorized by the board, who meets the minimum requirements established by the State Board of Examiners for Speech-Language Pathology and Audiology, and who works under the supervision of a licensed audiologist.

(5) "Board" means the State Board of Examiners for Speech-Language Pathology and Audiology.

(6) "Dispensing hearing aids" means providing hearing aids to a consumer by sale, rental, lease, or otherwise, and includes without being limited to conducting testing and other procedures to determine suitability for use of a hearing aid, to determine hearing aid characteristics which properly compensate the hearing condition, to select suitable hearing aids, to fit hearing aids to the subject, and to counsel and instruct in the use thereof.

(7) "Hearing aid" means any wearable electronic instrument or device, including an assistive hearing device, designed for or represented or offered for the purpose of compensating for defective human hearing, including parts, attachments, ear molds, and accessories, except batteries.

(8) "License" means any license issued by the board to practice speech-language pathology or audiology.

(9) "Licensee" means any person licensed to practice speech-language pathology, audiology, or both pursuant to this chapter, but does not include the holder of a provisional license.

(10) "Person" means a natural person.

(11) "Preceptor" means any person who is licensed and has the responsibility of supervising or overseeing the training or activities of assistants, students, externs, provisional license holders, and others providing speech-language pathology or audiology services without full licenses.

(12) "Provisional license" means any temporary license issued by the board pursuant to standards and procedures determined by the board. Except for a provisional license granted pursuant to paragraph (8) of subsection (a) of Code Section 43-44-6, a provisional license shall not be granted for a total period of time to exceed one year.

(13) "Speech-language pathologist" means a person who practices speech-language pathology and who presents himself or herself to the public by any title or description of services incorporating the words speech-language pathologist, speech therapist, speech correctionist, speech clinician, language pathologist, language therapist, logopedist, communicologist, voice therapist, voice pathologist, or any similar title or description of service.

(14) "Speech-language pathology aide" means any person who aids in the providing of those speech-language pathology services authorized by the board, who meets the minimum requirements estab-

lished by the State Board of Examiners for Speech-Language Pathology and Audiology, and who works directly under the supervision of a licensed speech-language pathologist.

(15) “The practice of audiology” means the application of principles, methods, and procedures of identification of hearing loss, measurement, testing, evaluation, case management, prediction, prevention, consultation, counseling, instruction, and research related to hearing, hearing disorders, and auditory and vestibular function and dysfunction; intervention as related to such principles, methods, and procedures; interpretation of the results of such principles, methods, and procedures; the evaluation, recommendations, fitting, and dispensing of hearing aids, frequency modulation technologies, and other assistive devices designed to ameliorate the effects of a hearing disorder; the programming of cochlear implants and other implantable devices; and the planning, directing, conducting, and participating in hearing conservation programs and programs of habilitation, rehabilitation, and intervention for disorders of hearing, auditory function and processing, and vestibular function, including but not limited to auditory training, speechreading, and vestibular rehabilitation, which vestibular function and rehabilitation the audiologist is qualified to perform by virtue of education, training, and experience.

(16) “The practice of speech-language pathology” means the application of principles, methods, and procedures for the measurement, testing, evaluation, prediction, consultation, counseling, instruction, intervention, research, habilitation, or rehabilitation related to the development and disorders of speech or language including but not limited to voice, resonance, fluency, cognition, and swallowing for the purpose of evaluating, preventing, ameliorating, modifying, or otherwise treating such disorders and conditions in individuals or groups of individuals. (Ga. L. 1974, p. 1009, § 3; Ga. L. 1987, p. 1072, § 1; Ga. L. 1988, p. 13, § 43; Ga. L. 1992, p. 6, § 43; Ga. L. 1992, p. 1494, § 1; Ga. L. 1992, p. 3316, §§ 2, 3; Ga. L. 1993, p. 1510, § 1; Ga. L. 1999, p. 387, § 1; Ga. L. 2006, p. 1077, § 1/HB 1112.)

RESEARCH REFERENCES

ALR. — Right of corporation to engage in business, trade, or activity requiring license from public, 165 ALR 1098.

43-44-4. Creation of board; effect on prior board; composition; appointment; vacancies; terms of office; removal of members; liability for official acts.

(a) The State Board of Examiners for Speech Pathology and Audiology existing on June 30, 1987, is abolished and there is created beginning July 1, 1987, and continuing thereafter the State Board of Examiners for Speech-Language Pathology and Audiology which shall succeed to all of that abolished board's powers, duties, and responsibilities which are not inconsistent with this chapter and which new board shall be composed of those members of the abolished board serving as such on June 30, 1987, which members shall serve out their respective terms of office and until their respective successors are appointed and qualified pursuant to this Code section. The board created by this Code section shall administer this chapter. The board shall consist of eight members who shall be appointed by the Governor and shall be confirmed by the Senate. Three of the members shall be licensed speech-language pathologists and three shall be licensed audiologists, all of whom shall have been engaged in rendering services to the public, teaching, or research in speech-language pathology or audiology for a period of at least three years immediately preceding their appointments. One member shall be a board certified otolaryngologist of this state. One member shall be a lay person representing the public. All members shall be residents of this state and shall have been residents of this state for at least one year prior to their appointments.

(b) Appointments by the Governor may be made from lists of names submitted by the Georgia Speech-Language-Hearing Association, Georgia Organization for School-Based Speech-Language Pathologists, Georgia Academy of Audiology, and the Georgia Society of Otolaryngology Head and Neck Surgery or other interested persons. Board members shall be appointed for a period of three years and until their respective successors are appointed and qualified. No member of the board may serve more than two consecutive full terms.

(c) Members of the board shall serve until the expiration of the terms for which they have been appointed and until their respective successors are appointed and qualified. When a vacancy upon the board occurs, the Governor shall appoint, pursuant to this Code section, a successor to fill the unexpired term.

(d) The Governor may remove any member of the board for dishonorable conduct, incompetency, or neglect of duty.

(e) No member of the board shall be liable to civil action for any act performed in good faith in performance of the member's duties as prescribed by law. (Ga. L. 1974, p. 1009, § 4; Ga. L. 1978, p. 1474, § 1; Ga. L. 1981, p. 668, §§ 1, 2; Ga. L. 1987, p. 1072, § 1; Ga. L. 2006, p. 1077, § 1/HB 1112.)

Law reviews. — For comment on *Rogers v. Medical Ass'n*, 244 Ga. 151, 259 S.E.2d 85 (1979), invalidating Georgia statute requiring Governor's appointments to Composite State Board of Medical Examiners be made solely from nominees submitted by state medical society as an unconstitutional delegation of legislative authority to a private organization, see 29 Emory L.J. 1183 (1980).

43-44-5. Meetings; officers; reimbursement of members.

The board shall hold a regular annual meeting at which it shall elect from its membership a chairperson and vice chairperson. In addition to its annual meeting, the board shall hold such other meetings as are necessary for the performance of its duties under this chapter. The members of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2. (Ga. L. 1974, p. 1009, § 6; Ga. L. 1981, p. 668, §§ 3, 4; Ga. L. 1987, p. 1072, § 1; Ga. L. 1999, p. 387, § 2; Ga. L. 2006, p. 1077, § 1/HB 1112.)

43-44-6. General powers and duties of board.

(a) The board shall:

(1) Have the responsibility and duty of administering and enforcing this chapter and shall assist the division director in carrying out this chapter;

(2) Have the power to establish and to revise the requirements for obtaining licensure or the renewal of licensure;

(3) Make all rules, not inconsistent with this chapter, that are reasonably necessary for the conduct of its duties and proceedings;

(4) Adopt rules and regulations relating to professional conduct commensurate with the policy of this chapter, including, but not limited to, regulations which establish ethical standards of practice and for other purposes. Following their adoption, such rules and regulations consistent with this chapter shall govern and control the professional conduct of every person who holds a license to practice under this chapter;

(5) Conduct hearings and keep records and minutes as are necessary to the orderly dispatch of its functions;

(6) Adopt a common seal;

(7) Register and otherwise regulate qualified speech-language pathology aides and audiology assistants. The provisions of this paragraph shall not apply to any student, intern, or trainee performing speech-language pathology or audiology services while completing the supervised clinical experience;

(8) Issue provisional licenses to speech-language pathologists during the paid clinical experience;

- (9) Issue, renew, and reinstate licenses;
- (10) Deny, suspend, revoke, or otherwise sanction licenses;
- (11) Accept results of qualifying examinations, administer examinations, or contract with qualified testing services to conduct or supervise examinations;
- (12) Establish fees; and
- (13) Establish requirements for continuing professional education of persons subject to this chapter by appropriate regulation.

(b) The division director shall be guided by the recommendations of the board in all matters relating to this chapter. (Ga. L. 1974, p. 1009, § 5; Ga. L. 1978, p. 1474, § 2; Ga. L. 1987, p. 1072, § 1; Ga. L. 1988, p. 13, § 43; Ga. L. 1992, p. 1494, § 2; Ga. L. 2000, p. 1706, § 19; Ga. L. 2006, p. 1077, § 1/HB 1112.)

Administrative rules and regulations. — Rules of the profession, Official Compilation of the Rules and Regulations

of the State of Georgia, Rules of Board of Examiners for Speech-Language Pathology and Audiology, Chapters 609-1 et seq.

43-44-7. License required; exemptions; posting license.

(a) No person shall practice or hold himself or herself out as being able to practice speech-language pathology or audiology in this state unless that person is licensed in accordance with this chapter. Nothing in this chapter, however, shall be construed so as to prevent a person licensed under any other law of this state from operating within the scope of that person's license.

(b)(1) Licensure is not required of a speech-language pathologist certified by the Department of Education or Professional Standards Commission or successor agency while that person is working as an employee of a public educational institution, serving any grade or grades from pre-kindergarten through grade 12, provided that no fees are charged for the services either directly or through a third party, except for Medicaid.

(2) Registration as a speech-language pathology aide is not required of a public education communication aide while that person is working as an employee of an educational institution, provided that no fees are charged for the services either directly or through a third party.

(c) Nothing in this chapter shall be construed to prevent participation by a student, intern, or fellow in supervised clinical services which are directly related to meeting the qualifications for licensure as stipulated by this chapter.

(d) Licensees shall conspicuously post their speech-language pathology or audiology license at all times in their principal office or place of business.

(e) Nothing in this chapter shall be construed to entitle any person licensed under this chapter to engage in the practice of selling and dispensing hearing aids unless such person is licensed as an audiologist under this chapter.

(f) Nothing in this chapter shall be construed to limit in any way the rights of hearing aid dealers or dispensers licensed under the laws of this state.

(g) Nothing in this chapter shall be construed to restrict hearing testing or any other act by a physician licensed under Chapter 34 of this title operating within the scope of his or her license or the performing of hearing testing by persons acting under the supervision of a licensed physician, provided that the physician shall be on the premises while such acts are being performed.

(h) A person who is not licensed as an audiologist may perform nondiagnostic electro-physiologic screening of the auditory system, using otoacoustic emissions or auditory brainstem response technology, as part of a planned and organized screening effort for the initial identification of communication disorders in infants under the age of three months, provided that:

(1) The person not licensed as an audiologist has completed a procedure specific training program directed by an audiologist licensed under this chapter;

(2) The screening equipment and protocol used are fully automated and the protocol is not accessible for alteration or adjustment by the person not licensed as an audiologist;

(3) The results of the screening are determined automatically by the programmed test equipment, without discretionary judgment by the person not licensed as an audiologist, and are only reported as "pass or fail" or "pass or refer";

(4) An audiologist licensed under this chapter is responsible for the training of the person not licensed as an audiologist, the selection of the screening program protocol, the determination of administration guidelines, the periodic monitoring of the performance of the person not licensed as an audiologist, and the screening program results; and

(5) The participation of the person not licensed as an audiologist in such an automated screening program is limited to the recording of patient demographic information; the application of earphones, elec-

trodes, and other necessary devices; the initiation of the test; the recording of the results; and the arrangement of the referral for those who do not pass the screening to an audiologist licensed under this chapter for follow-up evaluation.

(i)(1) Any person in this state or physically located in another state or foreign country who, using telecommunications and information technologies through which speech-language pathology information and auditory-vestibular system information or data is transmitted, performs an act that is part of a patient care service located in this state, including but not limited to any measures of speech-language pathology or auditory-vestibular system function or hearing instrument selection, fitting, or dispensing that would affect the diagnosis or treatment of the patient is engaged in the practice of speech-language pathology or audiology in this state. Any person who performs such acts through such means shall be required to have a license to practice speech-language pathology or audiology in this state and shall be subject to regulation by the board. No such out-of-state or foreign practitioner shall have ultimate authority over the speech-language or auditory-vestibular system health care of a patient who is located in this state. Any such practitioner in this state, another state, or a foreign country shall abide by the rules of the board.

(2) This subsection shall not apply to:

(A) The acts of a speech-language pathologist or an audiologist located in another state or foreign country who provides consultation services at the request of a speech-language pathologist or an audiologist licensed in this state;

(B) The acts of a speech-language pathologist or an audiologist licensed in another state or foreign country who:

(i) Provides consultation services without compensation, remuneration, or other expectation thereof and without altering, adjusting, or manipulating hearing aid device controls; or

(ii) Provides consultation services to a graduate school located in this state and approved by the board; or

(C) The acts of a speech-language pathologist or an audiologist located in another state or foreign country when invited as a guest of any graduate school or institution of higher learning approved by the board, state, or national accrediting body or component thereof, for the sole purpose of engaging in professional education through lectures, clinics, or demonstrations.

(3) This Code section shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of

health care services in a setting or in a manner not otherwise authorized by the laws of this state.

(4) All persons subject to the provisions of this Code section shall be required to comply with all applicable requirements of the laws of this state relating to the maintenance of patient records and the confidentiality of patient information, regardless of where such speech-language pathologist or audiologist may be located and regardless of where or how the records of any patient located in this state are maintained. (Ga. L. 1974, p. 1009, § 7; Ga. L. 1978, p. 1474, § 3; Ga. L. 1987, p. 1072, § 1; Ga. L. 1992, p. 1494, § 3; Ga. L. 1992, p. 3316, § 4; Ga. L. 1993, p. 1510, § 2; Ga. L. 1997, p. 1387, § 4; Ga. L. 1999, p. 266, § 1.2; Ga. L. 1999, p. 387, § 3; Ga. L. 2006, p. 1077, § 1/HB 1112.)

Cross references. — Regulation of hearing aid dealers and dispensers, T. 43, C. 20.
Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, “Medicaid” was substituted for “medicaid” in paragraph (b)(1). Pursuant to Code Section 28-9-5, in 1999, punctuation was revised at the end of paragraph (h)(3).

OPINIONS OF THE ATTORNEY GENERAL

Diagnostic hearing tests. — Individual who does not possess license from State Board of Examiners for Speech Pathology and Audiology may not perform diagnostic hearing tests under supervision of a physician; however, such individual may perform routine hearing screenings under supervision of a physician. 1982 Op. Att’y Gen. No. 82-90.

RESEARCH REFERENCES

ALR. — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.
Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

43-44-8. Requirements for licensure; continuing validity of licenses; renewal of licenses.

(a) To be eligible for licensure by the board as a speech-language pathologist or as an audiologist, the applicant shall have:

- (1) Completed the academic and clinical requirements as established by rule of the board;
- (2) Completed the professional experience requirement. Every applicant for licensure as a speech-language pathologist or audiologist shall demonstrate, prior to licensure, full-time or equivalent part-time professional employment, as determined by the board. The board, by rule, shall establish standards for obtaining and verifying the required professional employment experience;

(3) Passed an examination or examinations approved by the board. Each applicant for licensure as a speech-language pathologist or audiologist shall make application for examination as provided by the board;

(4) Demonstrated good moral character; and

(5) Demonstrated recency of study through experience, continuing education, or both, as approved by the board.

(b) To be eligible for licensure by the board as a speech-language pathologist, the applicant shall possess a master's or higher degree with a major emphasis in speech-language pathology from an accredited program, which incorporates the academic course work and the minimum hours of supervised graduate training required by the rules and regulations of the board.

(c) To be eligible for licensure by the board as an audiologist:

(1) Effective January 1, 2007, the applicant shall have earned a doctoral degree in audiology or completed the academic requirement of a doctoral degree program with a major emphasis in audiology from an institution of higher learning that is, or at the time the applicant was enrolled and graduated was, accredited by an accrediting agency recognized by the United States Department of Education or its successor organization; or

(2) The applicant shall have earned a master's degree with a major emphasis in audiology which was conferred before January 1, 2007, from an institution of higher learning which was, at the time the applicant was enrolled and graduated, accredited by an accrediting agency recognized by the United States Department of Education or its successor organization.

(d) Any speech-language pathology or audiology applicant who graduated from or is currently enrolled in a program at a university or college outside the United States or Canada shall:

(1) Present documentation of the determination of equivalency to standards established by the United States Department of Education or its successor organization in order to qualify; and

(2) Have completed the academic and clinical requirements established by rule of the board.

The board may waive the education, practicum, and professional employment experience requirements for an applicant who received a professional education in another country if the board is satisfied that the applicant meets equivalent education and practicum requirements, passes the approved examination in the area of the license sought, and meets other requirements established by rule of the board.

(e) Notwithstanding any other provision of this chapter, any person who has been issued a license by the State Board of Examiners for Speech Pathology and Audiology to practice as a speech pathologist or an audiologist and whose license was valid on June 30, 2006, shall not be required to comply with the provisions of subsections (a), (b), (c), and (d) of this Code section. Such person shall continue to be licensed in that person's respective field and shall have his or her license renewed if he or she complies with the other provisions of this chapter, including but not limited to any continuing education requirement established by the board for license renewal.

(f) The board, by rule, shall establish requirements for the renewal of a license. A license may not exceed the time allowed by rule of the board. (Ga. L. 1974, p. 1009, § 8; Ga. L. 1978, p. 1474, §§ 4, 5; Ga. L. 1987, p. 1072, § 1; Ga. L. 1992, p. 6, § 43; Ga. L. 1993, p. 1510, § 3; Ga. L. 1994, p. 97, § 43; Ga. L. 1999, p. 387, § 4; Ga. L. 2006, p. 1077, § 1/HB 1112.)

Administrative rules and regulations. — Requirements for licensure, Official Compilation of the Rules and Regulations of the State of Georgia, Board of Examiners for Speech-Language Pathology and Audiology, Chapter 609-3.

43-44-9. Reciprocity; holders of Certificate of Clinical Competence of the American Speech-Language and Hearing Association.

(a) The board may, in its discretion, upon payment of fees, grant a license without examination to applicants who present proof of current licensure in a state or country whose requirements for licensure are substantially equivalent to those of this chapter.

(b) The board may, in its discretion, upon payment of fees, grant a license without examination to those who hold the Certificate of Clinical Competence of the American Speech-Language and Hearing Association in the area for which they are applying for licensure, or to those who hold certification of the American Board of Audiology, provided the applicant otherwise meets the eligibility requirements as defined in Code Section 43-44-8. (Ga. L. 1974, p. 1009, § 9; Ga. L. 1975, p. 1650, § 1; Ga. L. 1987, p. 1072, § 1; Ga. L. 2006, p. 1077, § 1/HB 1112.)

Cross references. — Cooperation between Georgia and other states generally, T. 28, C. 6.

43-44-10. Issuance of license.

An applicant who meets the requirements for licensure as provided by this chapter and has paid the requisite fee or fees shall be licensed

by the board as a speech-language pathologist, audiologist, or both. (Ga. L. 1974, p. 1009, § 13; Ga. L. 1981, p. 668, § 6; Ga. L. 1987, p. 1072, § 1; Ga. L. 2006, p. 1077, § 1/HB 1112.)

43-44-10.1. Speech-language pathology aides; determination of minimum requirements.

Repealed by Ga. L. 2006, p. 1077, § 1/HB 1112, effective January 1, 2007.

Editor's notes. — This Code section was based on Code 1981, § 43-44-10.1, enacted by Ga. L. 1992, p. 1494, § 4.

43-44-11. Licensure in specialty; provisional and inactive licenses; renewal.

(a) The board shall issue a certificate to each person whom it licenses as a speech-language pathologist, audiologist, or both. Licensure shall be granted independently in either speech-language pathology or audiology. Qualified applicants may be independently licensed in both areas.

(b) The board may establish, through rules and regulations, a mechanism to provide for provisional and inactive status licenses to applicants.

(c) The board may, in its discretion, upon payment of fees, grant a provisional license to an applicant who has satisfied the requirements of paragraph (1) of subsection (b) or paragraph (1) or (2) of subsection (c) of Code Section 43-44-8 and who is engaged in a paid clinical experience. Such provisional license shall be valid for one year and subject to renewal for only one additional year. A person holding a provisional license shall be subject to the same disciplinary action as a person holding a full license.

(d) All licenses shall be renewed biennially. Expiration, renewal, and penalty dates and provisions shall be as established by the board in accordance with Code Section 43-1-4. (Ga. L. 1974, p. 1009, § 10; Ga. L. 1978, p. 1474, § 6; Ga. L. 1981, p. 668, § 5; Ga. L. 1987, p. 1072, § 1; Ga. L. 1999, p. 387, § 5; Ga. L. 2006, p. 1077, § 1/HB 1112.)

Administrative rules and regulations. — Inactive status, Official Compilation of the Rules and Regulations of the

State of Georgia, Board of Examiners for Speech-Language Pathology and Audiology, Chapter 609-9.

43-44-12. Advertising by licensees.

Licensees may advertise their services, but such advertising shall be subject to regulation by the board. (Ga. L. 1981, p. 668, § 7; Ga. L. 1987, p. 1072, § 1; Ga. L. 2006, p. 1077, § 1/HB 1112.)

Cross references. — False or fraudulent advertising, § 10-1-420 et seq.

43-44-13. Investigatory and disciplinary authority of the board.

The investigatory authority and disciplinary authority of the board shall be as provided in Code Section 43-1-19. (Code 1981, § 43-44-13, enacted by Ga. L. 1987, p. 1072, § 1; Ga. L. 2006, p. 1077, § 1/HB 1112.)

Editor's notes. — Ga. L. 1987, p. 1072, § 1, effective July 1, 1987, repealed the former Code section and reenacted the current Code section. The former Code section was based on Ga. L. 1974, p. 1009, § 11 and related to suspension or revocation of licenses and issuance of reprimands.

RESEARCH REFERENCES

ALR. — Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 ALR 1388.

43-44-14. Applicability of the “Georgia Administrative Procedure Act.”

Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” applies to and governs all administrative action taken by the board. (Ga. L. 1974, p. 1009, § 11; Ga. L. 1987, p. 1072, § 1; Ga. L. 2006, p. 1077, § 1/HB 1112.)

RESEARCH REFERENCES

ALR. — Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 ALR 1388.

43-44-15. Effect of other laws.

Nothing contained in any other law shall prevent a person who is qualified under this chapter from engaging in the practice for which he or she is licensed under this chapter. (Ga. L. 1974, p. 1009, § 12; Ga. L. 1987, p. 1072, § 1; Ga. L. 2006, p. 1077, § 1/HB 1112.)

43-44-16. Penalties.

Any person who practices speech-language pathology or audiology or who offers or pretends to practice or holds himself or herself out as eligible to practice speech-language pathology or audiology and who is not legally registered or licensed under this chapter shall be guilty of a misdemeanor. Each day or fraction of a day that such person practices in violation of this chapter shall constitute a separate offense. (Code 1981, § 43-44-16, enacted by Ga. L. 1987, p. 1072, § 1; Ga. L. 1991, p. 94, § 43; Ga. L. 1994, p. 97, § 43; Ga. L. 2006, p. 1077, § 1/HB 1112.)

Editor's notes. — Ga. L. 1987, p. 1072, § 1, effective July 1, 1987, repealed the former Code section and enacted the present Code section. The former Code

section, which dealt with injunctive actions to enforce the provisions of this chapter, was based on Ga. L. 1978, p. 1474, § 7.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders not required. — Offense under O.C.G.A. § 43-44-16 is not one for which those

charged with a violation are to be fingerprinted. 2007 Op. Att'y Gen. No. 2007-1.

43-44-17. Effect on activities of employers acting under Occupational Safety and Health Act of 1970.

Nothing contained in this chapter shall limit or affect the activities of any employer or any person acting on behalf of any employer under the provisions of the Occupational Safety and Health Act of 1970 or any standard promulgated pursuant to said act, including, without limitation, the performance of hearing tests by a technician as part of a workplace hearing conservation program, provided that the technician who performs audiometric tests shall be responsible to a licensed audiologist or physician. (Code 1981, § 43-44-18, enacted by Ga. L. 1989, p. 1602, § 1; Code 1981, § 43-44-17, as redesignated by Ga. L. 2006, p. 1077, § 1/HB 1112.)

Editor's notes. — The former Code section, concerning termination, was based on Ga. L. 1981, Ex. Sess. p. 8 (Code Enactment Act) and Ga. L. 1987, p. 1072, § 1. The version of this Code section in effect until 1987, concerning penalties and forfeiture of license upon conviction, was repealed by Ga. L. 1987, p. 1072, § 1, effective July 1, 1987 and was based on Ga. L. 1974, p. 1009, § 14. Similar provi-

sions of law were enacted by Ga. L. 1987, p. 1072, § 1 as Code Section 43-44-16.

Ga. L. 2006, p. 1077, § 1, effective January 1, 2007, redesignated Code Section 43-44-18 as Code Section 43-44-17.

U.S. Code. — The federal Occupational Safety and Health Act of 1970, referred to in this Code section, is found at 29 U.S.C. § 651 et seq.

RESEARCH REFERENCES

ALR. — Who is “employer” for purposes of Occupational Safety and Health Act (29 USCA § 651 et seq.), 153 ALR Fed. 303.

43-44-18. Redesignated.

Editor’s notes. — The former provisions of this Code section, concerning the effect of this chapter on activities of employers acting under the Occupational Safety and Health Act of 1970, were renumbered as Code Section 43-44-17 by Ga. L. 2006, p. 1077, § 1, effective Janu-

ary 1, 2007. The former provisions of this Code section in effect until July 1, 1987, concerning termination of the board, were renumbered as Code Section 43-44-17 [repealed] by Ga. L. 1987, p. 1072, § 1, effective July 1, 1987.

CHAPTER 45

PERSONS ENGAGED IN STRUCTURAL PEST CONTROL

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43-45-11.	Transfer of licenses, certifications, and registrations; procedure upon change of status of licensee.	43-45-23.	Interference with or obstruction of inspector.
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		43-45-25.	Penalty.
		43-45-26.	Termination [Repealed].

Cross references. — Authority of Commissioner of Agriculture to impose penalty in lieu of other action, § 2-2-10.

Editor's notes. — Ga. L. 1983, p. 739 provided for the transfer of certain functions relating to structural pest control from the joint-secretary of the state examining boards to the Commissioner of Agriculture; see Code Sections 43-45-2, 43-45-7, 43-45-8, and 43-45-10. Section 8

of that Act, not codified by the General Assembly, provided (pursuant to Code Section 45-12-90) for the transfer of funds appropriated for the administration and enforcement of this chapter from the Secretary of State to the Department of Agriculture.

Administrative rules and regulations. — Administration and organization, Official Compilation of the Rules and

Regulations of the State of Georgia, Georgia Structural Pest Control Commission, Chapter 620-1.

OPINIONS OF THE ATTORNEY GENERAL

Applicability to renting out truck with extermination supplies. — Equipping truck with pest control equipment and making the equipment available for the use of the property owners

would be engaging in activities covered by statutory provisions and would be subject to the statute's requirements. 1962 Op. Att'y Gen. p. 14.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 39 Am. Jur. 2d, Health, §§ 1 et seq., 25 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Employees, § 1 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law,

§ 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 39A C.J.S., Health and Environment, §§ 3 et seq., 37 et seq., 48 et seq. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

43-45-1. Short title.

This chapter may be cited as the "Structural Pest Control Act." (Ga. L. 1955, p. 564, § 1.)

Law reviews. — For article advocating more comprehensive laws regulating pesticide use, see 17 J. of Pub. L. 351 (1968).

JUDICIAL DECISIONS

Cited in Johnson v. Landing, 157 Ga. App. 313, 277 S.E.2d 307 (1981).

43-45-2. Definitions.

As used in this chapter, the term:

(1) "Applicant" means any persons or any person in charge of any individuals, firm, partnership, corporation, association, or any other organization or any combination thereof making application for a

license to engage in operations regulated by this chapter, or any other person making application for certification or registration under this chapter.

(2) "Application of a pesticide under the direct supervision of a certified operator" means, unless otherwise prescribed by its labeling or by regulations of the Commissioner, the application of a pesticide by a competent person acting under the instructions and control of a certified operator who is available if and when needed, even though such certified operator is not physically present at the time at which and the place the pesticide is applied.

(3) "Bond" means a written instrument issued or executed by a bonding, surety, or insurance company licensed to do business in this state, or otherwise approved by the commission, guaranteeing the fulfillment of the agreement between the licensee or business entity and his customer.

(4) "Branch office" means any place of doing business which has two or more employees engaged in the control of insect pests, rodents, or wood-destroying organisms.

(5) "Certified operator" means any individual who has been determined competent to use or supervise the use of pesticides, including restricted use pesticides or state restricted pesticide uses, as defined in this chapter, in the structural pest control category or categories in which he is currently licensed.

(6) "Commission" means the State Structural Pest Control Commission.

(7) "Commissioner" means the Commissioner of Agriculture of this state.

(8) "Employee" means any person employed by a licensee with the exception of clerical, janitorial, or office maintenance employees, or those employees performing work completely disassociated with the control of insects, pests, and rodents and the control of wood-destroying organisms.

(9) "Fumigant" means any substance which by itself or in combination with any other substance emits or liberates a gas or gases, fumes, or vapors, which gas or gases, fumes, or vapors when liberated and used will destroy vermin, rodents, insects, and other pests, but are usually lethal, poisonous, noxious, or dangerous to human life.

(10) "Insecticides" means substances, not fumigants, under whatever name known, used for the destruction or control of insects and similar pests.

(11) "Licensee" means a business entity engaged in the business of structural pest control which holds a valid license issued under this chapter.

(12) "Pesticide" means attractants, fumigants, fungicides, insecticides, rodenticides, and repellants.

(13) "Registered employee" means an employee registered as provided by this chapter.

(14) "Repellants" means substances, not fumigants, under whatever name known, which may be toxic to insects and related pests, but generally employed because of their capacity for preventing the entrance or attack of pests.

(15) "Restricted use pesticide" means any attractant, fumigant, fungicide, insecticide, rodenticide, or repellant whose label bears one or more uses which have been classified as restricted by the administrator, Environmental Protection Agency, or any use of these pesticides which, when used as directed or in accordance with widespread and commonly recognized practice, the Commissioner determines, subsequent to a hearing, requires additional restrictions for that use to protect the environment, including man, lands, beneficial insects, animals, crops, and wildlife, other than pests.

(16) "Rodenticides" means substances, not fumigants, under whatever name known, whether poisonous or otherwise, used for the destruction or control of rodents.

(16.5) "Secretary" means the Commissioner of Agriculture in his capacity as secretary of the State Structural Pest Control Commission.

(17) "Structural pest control" means control of wood-destroying organisms or fumigation; the identification of infestations or infections; the making of inspections; the use of pesticides, including insecticides, repellants, rodenticides, fumigants, and other substances, and the use of mechanical devices of structural modifications under whatever name known for the purpose of preventing, controlling, and eradicating insects, vermin, rodents, and other pests in household structures, commercial buildings, and other structures, including adjacent outside areas; and all phases of fumigation, including treatments of products by vacuum fumigation and the fumigation of railroad cars, trucks, ships, and airplanes. (Ga. L. 1955, p. 564, § 2; Ga. L. 1957, p. 299, § 2; Ga. L. 1960, p. 813, § 1; Ga. L. 1976, p. 308, § 1; Ga. L. 1977, p. 701, §§ 1-5; Ga. L. 1983, p. 739, § 1.)

43-45-3. Creation of commission; composition; vacancies; number of members who may represent a single business entity.

There is created a State Structural Pest Control Commission to consist of seven members, three of whom shall be residents of this state who are engaged in the pest control industry and who are certified operators under this chapter. Such members shall be appointed by the Commissioner. One member shall be the head of the Department of Entomology of the University of Georgia, ex officio, or some qualified person of that department designated by him or her. One member shall be the Commissioner of Agriculture of this state or the Commissioner's designee; one member shall be the commissioner of public health, ex officio, or some qualified person designated by him or her; and one member shall have no connection whatsoever with the pest control industry but shall have a recognized interest in consumer affairs and in consumer protection concerns. The Commissioner shall fill any vacancies that may occur in the appointive membership of the commission. No business entity shall be represented by more than one member on the commission at any time. (Ga. L. 1955, p. 564, § 3; Ga. L. 1960, p. 813, § 2; Ga. L. 1976, p. 308, § 2; Ga. L. 1978, p. 999, § 1; Ga. L. 1980, p. 1446, § 1; Ga. L. 1983, p. 739, § 2; Ga. L. 1998, p. 191, § 1; Ga. L. 2009, p. 453, § 1-6/HB 228; Ga. L. 2011, p. 705, § 6-5/HB 214.)

The 2009 amendment, effective July 1, 2009, substituted "commissioner of community health" for "commissioner of human resources" in the fourth sentence of this Code section.

The 2011 amendment, effective July 1, 2011, substituted "commissioner of public health" for "commissioner of community health" in the fourth sentence of this Code section.

43-45-4. Terms of office; eligibility of member to succeed himself.

The appointive members of the commission shall be appointed originally for a term of one, two, and three years; thereafter successors shall be appointed for a term of three years. All such members shall serve for the specified term and until their successors are appointed and qualified. There shall be no disqualification of any member appointed to succeed himself. (Ga. L. 1955, p. 564, § 4; Ga. L. 1960, p. 813, § 3.)

43-45-5. Election of officers; action by vote of four members; meetings.

The commission shall elect from its membership a chairman and a vice-chairman, who shall be elected annually by the members of the commission by a majority vote. No action shall be taken without four votes in accord. The commission shall determine the frequency of its

meetings. (Ga. L. 1955, p. 564, § 5; Ga. L. 1966, p. 171, § 1; Ga. L. 1978, p. 999, § 2.)

43-45-6. Reimbursement of commission members.

Each member of the commission shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2. (Ga. L. 1955, p. 564, § 7; Ga. L. 1966, p. 171, § 4.)

43-45-7. Commissioner as secretary of commission.

The Commissioner shall be secretary of the commission. The secretary shall issue such licenses and certificates and perform such other duties as the commission shall direct in order to carry out this chapter. (Ga. L. 1955, p. 564, § 8; Ga. L. 1983, p. 739, § 3.)

43-45-8. General powers and duties of commission.

The commission is authorized and required to:

(1) Make such reasonable rules and regulations as may be necessary to protect the interest, health, and safety of the public and to ensure the efficiency of licensees, operators, and registered employees to carry out this chapter. Such rules and regulations shall not be effective until a public hearing shall have been granted and notification of such a hearing has been made to all licensees and certified operators;

(2) Provide for an appropriate and written examination for applicants and any other appropriate means of examination for applicants. The frequency of such examination shall be at the discretion of the commission, based upon the number of applications received, but not less than two such examinations shall be held annually. The commission shall give one examination per phase of structural pest control for one fee if the applicant seems to qualify. The examination fee shall be in an amount established by the commission for each applicant who makes application to take the examination to become a certified household pest control operator, wood-destroying organism control operator, or fumigator. An examination may be taken for the payment of one fee; and, in case the applicant shall not be certified, he or she shall have the right to take the examination again at the next scheduled examination, upon the payment of an additional fee in an amount established by the commission. In case certification is again denied, the applicant must wait a full year before reapplication is made. Thereafter, one full year must elapse before subsequent application may be made;

(3) Make an annual report to the Governor of the activities, expenditures, receipts, and other matters pertinent to the operation

of the commission, a copy of which shall be filed by the Commissioner and the commission;

(4) Issue licenses to each place of business of each business entity qualifying under this chapter. Such licenses shall be renewable biennially and the license fee shall be in an amount established by the commission. In addition to the license fee per se, the commission is authorized to establish a research fee on each license in an amount sufficient to provide a minimum of \$30,000.00 per year and up to \$50,000.00 per year for the purpose of supporting the work of a research position in urban pest control at the University of Georgia. As a source of information for considering the amount of the research fee to be established, the commission shall be furnished within 30 days of the end of each fiscal year by the chairman of the Division of Entomology at the University of Georgia with a statement of the total costs associated with the research position for the preceding year and a description of the urban research projects to be conducted over the following two fiscal years. The commission shall advise the chairman of the Entomology Division at the University of Georgia on the projects proposed to be conducted; however, the final selection of projects shall be the sole responsibility of the chairman of the entomology division. Information provided to the commission on costs associated with the position shall be for advisory purposes only and the commission shall be solely responsible for establishment and collection of the research fee within the limits established above and for transferring such fees to the University of Georgia. If the University of Georgia discontinues such research position at any time, the commission shall discontinue its collection of the research fee and any unexpended funds held by the commission shall be transferred to the state treasury.

(5) Issue certificates, certifying the qualification of operators, to those persons qualifying under this chapter. The certification fee shall be in an amount established by the commission; such certification shall be renewable biennially unless revoked or canceled for cause, subject to reeducation or such other requirements as the commission may impose by regulation to ensure that certified operators continue to meet the needs of changing technology and to assure a continuing level of competence and ability to operate safely and properly;

(6) Issue certificates of registration to employees under this chapter. The secretary shall collect for such registration a fee in an amount established by the commission for each such registration. The commission is authorized to require a fee in an amount established by the commission for each change, cancellation, renewal, or issuance of a duplicate registration card;

(7) Adopt a seal and alter the same at the pleasure of the commission;

(8) Hold hearings, subpoena witnesses, and compel the production of documents and papers as shall be necessary in the performance of the duties of the commission;

(9) Enter into reciprocal agreements with comparable agencies of other states that have requirements substantially equivalent to this state, whereby persons licensed or certified by such other states may be issued a license or certified by the commission without an examination, provided that such other states issue licenses or certifications without examination to persons licensed or certified by the commission; and

(10) Aid and assist the Commissioner in the enforcement of this chapter in an advisory capacity as to matters pertaining to the enforcement of this chapter. (Ga. L. 1955, p. 564, § 6; Ga. L. 1957, p. 299, § 4; Ga. L. 1960, p. 813, § 4; Ga. L. 1966, p. 171, §§ 2, 3; Ga. L. 1976, p. 308, §§ 3-5; Ga. L. 1977, p. 701, §§ 6-8; Ga. L. 1983, p. 739, § 4; Ga. L. 1984, p. 22, § 43; Ga. L. 1991, p. 1423, § 1; Ga. L. 1996, p. 1072, § 1.)

Administrative rules and regulations. — Rules of the profession, Official Compilation of the Rules and Regulations

of the State of Georgia, Rules of Georgia Structural Pest Control Commission, Chapter 620-1 et seq.

JUDICIAL DECISIONS

Rules constituted binding administrative law and were part of contract.

— Rules promulgated pursuant to the general power vested in the commission under O.C.G.A. § 43-45-8 constituted a body of binding administrative law per-

taining to all fumigation and were part and parcel of any fumigation contract entered into between an exterminating company and the homeowner. *Walter v. Orkin Exterminating Co.*, 192 Ga. App. 621, 385 S.E.2d 725 (1989).

RESEARCH REFERENCES

ALR. — Tort liability of governmental unit for injury or damage resulting from

insecticide and vermin eradication operations, 25 ALR2d 1057.

43-45-9. Examination for certification as an operator; evidence from applicants as to employment of qualified operators; insurance requirements; required statements in contracts for service.

(a) All applicants for examination for certification as an operator must have a knowledge of the practical and scientific facts underlying the practice of structural pest control, control of wood-destroying organisms, and fumigation and the necessary knowledge and ability to

recognize and control those hazardous conditions which may affect human life and health. The commission may refuse to examine anyone convicted of a crime involving moral turpitude.

(b) Each applicant must present satisfactory evidence to the commission concerning his or her qualifications which must include at least one of the following:

(1) Two years' actual experience relating to service, one year of which must have been, within the last five years, as an employee, employer, or owner-operator in the field of household pest control, control of wood-destroying organisms, or fumigation, for whichever license is applied for;

(2) One or more years' specialized training in household pest control, control of wood-destroying organisms, or fumigation, or any combination thereof, under university or college supervision as a substitute for practical experience at the ratio of one year of schooling for one-fourth year practical experience; or

(3) A degree from a recognized college or university with advanced training or major in entomology, sanitary or public health engineering, or related subjects, including sufficient practical experience of structural pest control work under proper supervision.

(c) Each applicant for a license shall present evidence satisfactory to the commission that the business entity desiring the license has in its employ one or more qualified operators to engage in the business of structural pest control as provided in this chapter.

(d) Each applicant for a license shall submit with the application and each licensee shall submit at the time of renewal of the license a certificate of insurance verifying coverage from either an insurance company authorized to do business in this state or a surplus lines broker licensed by the Commissioner of Insurance. Such coverage shall be in the amount of not less than \$50,000.00 per occurrence, with a minimum annual aggregate of \$200,000.00 for all occurrences, and shall insure the licensee's business against bodily injury and property damage claims. The insurance shall also cover claims for pollution liability caused by sudden and accidental discharge or release of pollutants.

(e) In addition to the insurance coverage specified in subsection (d) of this Code section, each licensee for control of wood-destroying organisms shall submit on July 1, 2002, or within 30 days thereafter, each applicant for a license for control of wood-destroying organisms shall submit with the application for a license, and each licensee for control of wood-destroying organisms shall submit at the time of renewal of the license a certificate of insurance verifying coverage during the term of

the license from either an insurance company authorized to do business in this state or a surplus lines broker licensed by the Commissioner of Insurance. Such coverage shall be in the amount of not less than \$100,000.00 per occurrence, with a minimum annual aggregate of \$500,000.00 for all occurrences and shall insure the licensee's business against bodily injury and property damage claims arising from the licensee's treatment or services for control of wood-destroying organisms including errors and omission coverage on an occurrence basis.

(f) No license shall be issued or renewed and no business license shall be issued by a political subdivision pursuant to Code Section 43-45-15 until the insurance requirements of this Code section are met. The minimum insurance coverages required by this Code section must be maintained during the entire period of time a license is in force. Policies shall contain a cancellation provision whereby notification of cancellation is made by the insurer to and actually received by the commission, through the Structural Pest Control Section of the Department of Agriculture, not less than 30 days prior to the cancellation. Any license or renewal of a license shall be suspended automatically by operation of law if the insurance coverages are not in force or are canceled for any reason, unless equivalent insurance is then in effect. It shall be the duty of the licensee to notify the commission that equivalent insurance is in effect and furnish proof of such insurance to the commission. If the license or renewal license is not reinstated within three months, it shall be revoked by operation of law without a hearing.

(g) At the time of the issuance of any contract for treatment or service, a statement shall appear in the contract, in the same size type as other terms and conditions, stating the following:

"The Georgia Structural Pest Control Act" requires all pest control companies to maintain insurance coverage. Information about this coverage is available from this pest control company. (Ga. L. 1955, p. 564, § 10; Ga. L. 1960, p. 813, § 6; Ga. L. 1966, p. 171, §§ 6, 7; Ga. L. 1976, p. 308, §§ 10-12; Ga. L. 1977, p. 701, § 11; Ga. L. 1994, p. 1245, § 1; Ga. L. 2002, p. 856, § 1; Ga. L. 2003, p. 414, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Permissible basis for refusal of examination due to "low moral character". — State Structural Pest Control Commission may not refuse to examine an applicant because of "low moral charac-

ter" unless the applicant has been convicted of a crime involving moral turpitude or a violation of Ga. L. 1955, p. 564, § 21 (see O.C.G.A. § 43-45-25). 1969 Op. Att'y Gen. No. 69-440.

43-45-10. Registration of employees and agents; registration certificates; employee training.

The license holder shall register with the secretary the names of all employees and agents within 30 days of their employment. Upon submission by the license holder of application and the appropriate fee established by the commission, registration certificates shall be issued by the secretary. Such certificates shall be carried on the person of the registered employee at all times during performance of work and shall be displayed upon request to any person for whom work is being performed. The license holder shall be responsible for training the registered employee in the work he is to perform. Employees covered by this Code section include servicemen, salesmen, estimators, and other employees. Such registration cards shall be effective only while the employee shall remain in the employment of the license holder by whom registration was obtained, and only for such time as the license of the license holder remains valid. (Ga. L. 1955, p. 564, § 14; Ga. L. 1957, p. 299, § 7; Ga. L. 1960, p. 813, § 10; Ga. L. 1983, p. 739, § 5.)

43-45-11. Transfer of licenses, certifications, and registrations; procedure upon change of status of licensee.

A license, certification, or registration shall not be transferable. When there is a change in the status of a licensee, the licensee shall notify the commission immediately; and the licensee shall have not more than 90 days or until the next meeting of the commission following the expiration of the 90 day period to comply with this chapter as to the employment of a certified operator. (Ga. L. 1955, p. 564, § 12; Ga. L. 1960, p. 813, § 8.)

43-45-12. Suspension, cancellation, and revocation of licenses, certifications, and registrations; unlawful acts.

(a) A license, certification, or registration may be suspended, canceled, or revoked by the Commissioner, after notice and hearing, for any violation of this chapter. However, the certification of any certified operator who fails to renew as required by regulations adopted by the commission shall automatically become revoked through operation of law upon the date of expiration of the certification.

(b) Any licensee, certified operator, or registered employee who shall:

(1) Make representations for the purpose of defrauding; deceive or defraud another;

(2) Make a false statement with knowledge of its falsity for the purpose of inducing another to act thereon to his detriment;

(3) Use methods or materials that are not suitable; or use any fumigant, insecticide, rodenticide, attractant, or repellant in a manner inconsistent with its labeling or other restrictions imposed by the commission or the Commissioner;

(4) Fail to give the commission or its authorized representative, or the enforcing agency, upon demand or request, true information regarding methods and materials used, work performed, or other information essential to administration of this chapter;

(5) Make any intentional misrepresentation of a material fact in an application for a license, certification, or registration; or

(6) Fail to perform, report, or submit the appropriate fees consistent with rules and regulations promulgated pursuant to this chapter

shall be guilty of a misdemeanor for the first offense. For the second or any subsequent offense, any person violating this chapter shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction, shall be punished as provided in Code Section 17-10-4. (Ga. L. 1955, p. 564, § 11; Ga. L. 1957, p. 299, § 6; Ga. L. 1960, p. 813, § 7; Ga. L. 1976, p. 308, § 13; Ga. L. 1977, p. 701, § 12; Ga. L. 1983, p. 739, § 6; Ga. L. 2002, p. 856, § 2.)

RESEARCH REFERENCES

ALR. — Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 ALR 1388.

Liability of termite or other pest control or inspection contractor for work or representations, 32 ALR4th 682.

43-45-13. Restrictions on advertising.

(a) No licensee or business entity represented by the licensee shall advertise or in any way use the words “bond” or “bonded” in any manner in connection with his pest control business operations unless the licensee or business entity shall have an instrument then in force, or that is available to each customer, that comes within the definition of a bond as defined in Code Section 43-45-2. Each licensee shall submit proof of such instrument to the commission.

(b) Any person who shall claim that inspections or permits, or both, are required, authorized, or endorsed by the commission or any agency of the state or federal government shall be guilty of a violation of this chapter. No reference shall be made by any licensee in any form of advertising that would indicate the approval, endorsement, or recommendation of the commission or any agency of the state or federal government. (Ga. L. 1957, p. 299, § 5; Ga. L. 1982, p. 3, § 43.)

Cross references. — False or fraudulent advertising, § 10-1-420 et seq.

Administrative rules and regulations. — Advertising and bonds, Official

Compilation of the Rules and Regulations of the State of Georgia, Georgia Structural Pest Control Commission, Chapter 620-4.

OPINIONS OF THE ATTORNEY GENERAL

Revocation of license prohibits performing pursuant to preexisting contracts. — Once a pest control license has been revoked, one is prohibited from performing any type of structural pest control

work, whether or not done pursuant to a contract entered into prior to the revocation of license. 1967 Op. Att'y Gen. No. 67-53.

RESEARCH REFERENCES

ALR. — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

43-45-14. Designation of resident agents by nonresident licensees and certified operators.

Every nonresident licensee or certified operator shall designate a resident agent upon whom service of notice or process may be made to enforce this chapter or any liabilities arising from operations under this chapter. In the event no resident agent is designated, the Secretary of State shall be the resident agent of the nonresident for services or process. (Ga. L. 1955, p. 564, § 17.)

RESEARCH REFERENCES

Am. Jur. 2d. — 62B Am. Jur. 2d, Process, §§ 215, 217.

C.J.S. — 72 C.J.S., Process, § 76 et seq.

43-45-15. Issuance of business license by municipalities or other political subdivisions; local business license fees and occupation taxes.

(a) No municipal corporation or other political subdivision of the state may issue a business license to any person to engage in the business of structural pest control unless the applicant therefor shall submit proof of his compliance with this chapter.

(b) Persons licensed under this chapter shall be subject to Article 1 of Chapter 13 of Title 48. (Code 1981, § 43-45-15, enacted by Ga. L. 1993, p. 1292, § 3.)

43-45-16. Promulgation of regulations.

The commission and the Commissioner may promulgate such regulations as are necessary to establish, obtain approval of, and implement a state plan for certification of applicators, pursuant to Section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. (Ga. L. 1976, p. 308, § 6; Ga. L. 1994, p. 97, § 43.)

U.S. Code. — Section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act, referred to in this Code section, is codified at 7 U.S.C. § 136b.

43-45-17. Enforcement authority of Commissioner.

The Commissioner is authorized and directed to enforce this chapter and rules and regulations promulgated under this chapter and is authorized to utilize any employee of the Department of Agriculture. The Commissioner may inspect any materials used or work performed by persons engaged in the business of household pest control, wood-destroying organism control, or fumigation in this state. The Commissioner shall be authorized, after notice and hearing, to revoke, suspend, or cancel any license, certification, or registration issued under this chapter for a violation of this chapter or the rules and regulations promulgated under this chapter, for conviction or imposition of a final order imposing a civil penalty pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, or for conviction of a crime involving moral turpitude. It is the intent and purpose of this chapter to provide for the enforcement of this chapter by the Commissioner and to provide for the licensing, certification, and registration of those persons engaged in the business of structural pest control by the commission. It is the further intent of this chapter to provide that the commission shall advise the Commissioner with respect to the enforcement of this chapter. In connection therewith, the Commissioner, his designated agent, or a designated hearing officer is authorized to exercise the authority granted the commission to hold hearings, subpoena witnesses, and compel the production of documents and papers. (Ga. L. 1955, p. 564, § 16; Ga. L. 1960, p. 813, § 11; Ga. L. 1966, p. 171, § 8; Ga. L. 1976, p. 308, § 14; Ga. L. 1977, p. 701, § 13; Ga. L. 1994, p. 97, § 43.)

U.S. Code. — Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act, referred to in this Code section, is codified at 7 U.S.C. § 136l.

43-45-18. Applicability of the "Georgia Administrative Procedure Act."

Proceedings under this chapter shall be governed by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Ga. L. 1955, p. 564, § 18; Ga. L. 1960, p. 813, § 13.)

43-45-19. Inspection of licensees' records by Commissioner.

The Commissioner or his agents shall have during regular business hours the right to see, examine, and inspect any and all records of any licensee pertaining to the operations of the licensee within the provisions of this chapter. (Ga. L. 1957, p. 299, § 8; Ga. L. 1960, p. 813, § 12.)

43-45-20. Injunctions.

The Commissioner may institute a civil action to enjoin any violation of this chapter or any rule or regulation promulgated under this chapter. A violation of this chapter or any rule or regulation promulgated pursuant to this chapter is declared to constitute a public nuisance, and such action for injunction may be maintained notwithstanding the existence of other legal remedies and notwithstanding the pendency or successful completion of a criminal prosecution. (Ga. L. 1957, p. 299, § 11; Ga. L. 1960, p. 813, § 15; Ga. L. 1994, p. 97, § 43.)

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Injunctions, § 145. 58 Am. Jur. 2d, Nuisances, §§ 7, 8.

C.J.S. — 43 C.J.S., Injunctions, § 16. 66 C.J.S., Nuisances, §§ 7 et seq., 15, 65, 68, 71, 74, 86, 89, 91, 92, 103, 104, 108.

43-45-21. Exceptions to operation of chapter.

(a) This chapter shall not apply to any person doing work on his own property or to any regular employee of any person, firm, or corporation doing work on the property of such person, firm, or corporation under the direct supervision of the person who owns or has charge of the property on which the work is being done; provided, however, that nothing contained in this chapter shall authorize any person to endanger the public health or safety through the use of any pesticide or other substance for the purpose of structural pest control or through the violation of any other state or federal law or regulation.

(b) This chapter shall not apply to agencies of the federal, state, county, or municipal governments or to agents thereof in the performance of official duties. (Ga. L. 1955, p. 564, § 9; Ga. L. 1957, p. 299, § 5; Ga. L. 1966, p. 171, § 5; Ga. L. 1976, p. 308, § 9; Ga. L. 1977, p. 701, § 10.)

OPINIONS OF THE ATTORNEY GENERAL

Scope of exemption. — Exemption provided for in this section extends to any situation in which a person, firm, or corporation is doing structural pest control or

related work on property owned by such person, firm, or corporation. 1968 Op. Att'y Gen. No. 68-227 (see O.C.G.A. § 43-45-21).

RESEARCH REFERENCES

ALR. — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

43-45-22. Authority to refuse license to applicant convicted of violation of chapter.

Nothing in this chapter shall require the commission to issue a license to an applicant who has been convicted of a violation of this chapter. (Ga. L. 1955, p. 564, § 20; Ga. L. 1957, p. 299, § 10.)

OPINIONS OF THE ATTORNEY GENERAL

Permissible basis for refusing examination due to "low moral character." — State Structural Pest Control Commission may not refuse to examine an applicant because of "low moral charac-

ter" unless the applicant has been convicted of a crime involving moral turpitude or a violation of Ga. L. 1955, p. 564, § 21 (see O.C.G.A. § 43-45-25). 1969 Op. Att'y Gen. No. 69-440.

43-45-23. Interference with or obstruction of inspector.

Any person who shall interfere with or obstruct any inspector or other employee or agent of an authorized enforcement agency in the performance of his duties shall be guilty of a misdemeanor. (Ga. L. 1957, p. 299, § 12.)

RESEARCH REFERENCES

Am. Jur. 2d. — 58 Am. Jur. 2d, Obstructing Justice, §§ 12 et seq., 25, 26.

C.J.S. — 67 C.J.S., Obstructing Justice or Governmental Administration, § 7.

43-45-24. Engaging in pest control business without a license; engaging in field work or soliciting accounts without registering or obtaining certification.

(a) Any person, firm, corporation, association, or any other organization or combination thereof who shall engage in, solicit, supervise,

advertise, represent himself to be in, hold himself out as being in, or purport to be, a manager, owner, operator-owner, operator or agent (other than a registered employee), or agent in household pest control, control of wood-destroying organisms, fumigation, or related work, without having first secured a license issued for that purpose by the commission, shall be guilty of a misdemeanor for the first offense. For the second or any subsequent offense, any person violating this chapter shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction, shall be punished as provided in Code Section 17-10-4. Each violation shall constitute a separate offense.

(b) Any certified operator, registered employee, or employee or agent of a licensee who shall engage in field work or solicit accounts covered by this chapter and the rules and regulations promulgated hereto, without having first registered or obtained certification under this chapter, shall be guilty of a misdemeanor. (Ga. L. 1955, p. 564, § 9; Ga. L. 1957, p. 299, § 5; Ga. L. 1960, p. 813, § 5; Ga. L. 1976, p. 308, §§ 7, 8; Ga. L. 1977, p. 701, § 9; Ga. L. 2002, p. 856, § 3.)

Cross references. — False or fraudulent advertising, § 10-1-420 et seq.

JUDICIAL DECISIONS

“Professional service” for purposes of malpractice action. — Based upon the statutory definition of professional service, a pest control company’s control and treatment of wood destroying organisms is a profession for purposes of filing a professional malpractice action. *Colston v. Fred’s Pest Control, Inc.*, 210 Ga. App. 362, 436 S.E.2d 23 (1993); *Fender v. Adams Exterminators, Inc.*, 218 Ga. App. 62, 460 S.E.2d 528 (1995).

Application of the expert affidavit requirement to pest control services was clearly foreshadowed by *Gillis v. Goodgame*, 262 Ga. 117, 414 S.E.2d 197 (1992); thus, it was not unfair to dismiss an action for failure to file an affidavit, even though the complaint was filed before a decision that specifically applied the requirement to exterminators. *Fender v. Adams Exterminators, Inc.*, 218 Ga. App. 62, 460 S.E.2d 528 (1995).

OPINIONS OF THE ATTORNEY GENERAL

Revocation of license prohibits performance of preexisting contracts. — Once a pest control license has been revoked, one is prohibited from performing any type of structural pest control work,

whether or not done pursuant to a contract entered into prior to the revocation of the license. 1967 Op. Att’y Gen. No. 67-53.

RESEARCH REFERENCES

ALR. — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

Single or isolated transactions as falling

within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

Recovery back of money paid to unli-

censed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

43-45-24.1. Civil penalty; negotiated settlements; hearings and procedure; disposition of penalties; judicial review; judgments.

(a) Any licensee, operator, registered employee, or any other person violating this chapter, any rule or regulation of the commission or the Commissioner promulgated pursuant to this chapter, or any condition or limitation of any license or registration imposed pursuant to this chapter may be liable for a civil penalty of not more than \$10,000.00 per violation. Such penalty may be imposed in addition to or in lieu of the suspension, cancellation, or revocation of a license, certification, or registration or any other enforcement action authorized by this chapter or any other provision of law. The consent of the entity or person against whom the penalty is to be imposed shall not be required for the imposition of such penalty.

(b) Whenever the Commissioner determines that any licensee, operator, registered employee, or any other person has violated this chapter, any rule or regulation of the commission or the Commissioner promulgated pursuant to this chapter, or any condition or limitation of any license or registration imposed pursuant to this chapter, the Commissioner may issue an administrative order imposing a civil penalty as provided in subsection (a) of this Code section for the violation without a hearing unless a person subject to the order petitions for a hearing. Any person who is aggrieved or adversely affected by such order shall, upon written petition within ten days after the service of the order on such person, have a right to a hearing before a hearing officer appointed by the Commissioner. Failure to petition for a hearing within such time period shall constitute a waiver of the right to a hearing. The order and notice shall be served in person by the Commissioner or the Commissioner's agent or by certified mail or statutory overnight delivery, return receipt requested. In the case of a licensee, operator, or registered employee, receipt of the order and notice will be conclusively presumed five days after the mailing of the order by certified mail or statutory overnight delivery, return receipt requested, to the address provided by such person in such person's most recent application. The order shall contain or be accompanied by a notice of opportunity for a hearing which states that a hearing must be petitioned for in writing within ten days of the service of the order. If a hearing is petitioned for within such ten-day period, the administrative order is stayed pending a final decision by the hearing officer. Upon receipt of a written petition for a hearing, the Commissioner shall schedule the hearing before a hearing officer appointed by the Commissioner, unless postponed by

mutual consent, within 30 days of the receipt by the Commissioner of the petition. The Commissioner shall give the person petitioning for the hearing notice of the time and place of the hearing by certified mail or statutory overnight delivery to the address specified in the petition for a hearing at least 15 days prior to the date of the hearing. The hearing before the hearing officer shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and the rules and regulations adopted by the commission or the Commissioner pursuant thereto. Any party to the hearing, including the Commissioner, shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50.

(c) All civil penalties recovered by the Commissioner as provided in this Code section shall be paid into the state treasury.

(d) Informal disposition or settlement may be made of any contested case or action by stipulation, agreed settlement, consent order, or default.

(e) Except as otherwise provided in this Code section or by any other provision of this chapter, all proceedings under this Code section shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and the rules and regulations adopted by the commission and the Commissioner pursuant thereto.

(f) Any order of the hearing officer issued after a hearing as provided in this Code section or any order of the Commissioner issued pursuant to this Code section, either unappealed from as provided in this Code section or affirmed or modified on any review or appeal pursuant to this Code section, and from which no further review is taken or allowed under this Code section, may be filed, as unappealed from or as affirmed or modified, if reviewed or appealed, by certified copy from the Commissioner in the superior court of the county wherein such person under order resides, or if such person is a corporation in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred or in which jurisdiction is appropriate, whereupon such superior court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though such judgment had been rendered in an action duly heard and determined by such court. (Code 1981, § 43-45-24.1, enacted by Ga. L. 1994, p. 1245, § 2; Ga. L. 1999, p. 81, § 43; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to sub-

section (b) is applicable with respect to notices delivered on or after July 1, 2000.

43-45-25. Penalty.

Except as otherwise provided in this chapter, any person violating this chapter shall be guilty of a misdemeanor for the first offense. For the second or any subsequent offense, any person violating this chapter shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction, shall be punished as provided in Code Section 17-10-4. Each such violation shall constitute a separate offense. (Ga. L. 1955, p. 564, § 21; Ga. L. 2002, p. 856, § 4.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, a comma was deleted following “nature” in the last sentence.

43-45-26. Termination.

Repealed by Ga. L. 1992, p. 3137, § 35, effective July 1, 1992.

Editor’s notes. — This Code section was based on Ga. L. 1981, Ex. Sess., p. 8; Ga. L. 1983, p. 739, § 7 and Ga. L. 1989, p. 327, § 1.

CHAPTER 46

TRANSIENT MERCHANTS

Sec.		Sec.	
43-46-1.	Short title.	43-46-5.	Registered agents for receipt of process, notice, or demands; procedure if no registered agent designated.
43-46-2.	"Transient merchant" defined.	43-46-6.	Exceptions to licensing requirements.
43-46-3.	Prerequisites to engaging in business as a transient merchant.	43-46-7.	Penalty; violation of chapter as constituting an unfair or deceptive act.
43-46-4.	Filing application for license with county authorities; contents; fee; transfer of license; scope of license.		

Cross references. — Peddlers and itinerant traders, T. 43, C. 32. Exemption of traveling salesmen and merchants fill-

ing orders from municipal property taxes and license fees, § 48-5-354.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S.,

Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

43-46-1. Short title.

This chapter may be cited as the "Transient Merchant Act of Georgia." (Ga. L. 1980, p. 581, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60 Am. Jur. 2d, Peddlers, Solicitors and Transient Dealers, § 76 et seq.

43-46-2. “Transient merchant” defined.

As used in this chapter, the term “transient merchant” means any person, firm, or corporation, as principal or agent, or both, which is not a regular retail or wholesale merchant with a permanent place of business in this state, but rather one who displays samples, model goods, wares, or merchandise in any lot, building, room, or structure of any kind, whether fixed or mobile, for the purpose of securing orders for the retail sale of such items or items of like kind or quality for immediate or future delivery. The term “transient merchant” shall not include any person, firm, or corporation which:

- (1) Sells agriculture or forestry products;
- (2) Makes house-to-house or personal calls for the purpose of displaying samples or taking orders for shipment directly from a manufacturer;
- (3) Conducts business at any industry or association trade show;
or
- (4) Sells items at a rummage, garage, antique, or similar sale when such person, firm, or corporation is a resident of this state or has a permanent place of business within this state and such sale is not part of the regular business activity of such person, firm, or corporation or when the net proceeds of such sale are to be used for charitable purposes. (Ga. L. 1980, p. 581, § 2.)

43-46-3. Prerequisites to engaging in business as a transient merchant.

(a) It shall be unlawful for any transient merchant which is a corporation to engage in business in any county of this state unless such transient merchant shall comply with all applicable provisions of Title 14, relating to corporations, and obtain a license.

(b) It shall be unlawful for any transient merchant which is not a corporation to engage in business in any county of this state unless said transient merchant shall have and continuously maintain a registered agent or agents as provided in Code Section 43-46-5 and shall obtain a license. (Ga. L. 1980, p. 581, § 3; Ga. L. 1994, p. 97, § 43.)

43-46-4. Filing application for license with county authorities; contents; fee; transfer of license; scope of license.

(a) Any transient merchant shall file an application for a license in each county in which the merchant wishes to transact business. The application shall be filed with the tax collector, the tax commissioner, or

the county officer who issues business licenses. Such application shall include, but shall not be limited to, the following:

- (1) The name and permanent address of the transient merchant;
- (2) The name and permanent address of the transient merchant's registered agent or office;
- (3) The type of business to be conducted; and
- (4) The date and state of incorporation, when said transient merchant is a corporation.

(b) At the time the application is filed, the applicant shall pay a license fee in an amount to be fixed by the governing authority of the county, which shall be paid into the general county treasury. After the applicant has complied with all the provisions of this chapter, a transient business license shall be issued. Such license is not transferable, is valid only within the territorial limits of the issuing county, is valid only for the business stated on the application, and shall expire one year from the date issued. (Ga. L. 1980, p. 581, § 4; Ga. L. 1993, p. 787, § 1.)

43-46-5. Registered agents for receipt of process, notice, or demands; procedure if no registered agent designated.

(a) Any transient merchant required to have a registered agent under Code Section 43-46-3 shall file the name and permanent address of such registered agent with the clerk of the superior court of the county.

(b) Such registered agent shall be a resident of the county. Such agent may be served with any process, notice, or demand required or permitted by law to be served upon the transient merchant, in the same manner provided by law for the service of a summons and complaint.

(c) Such registered agent shall agree in writing to act as such agent and a copy of the agreement shall be filed with the license application.

(d) The clerk of the superior court shall maintain an alphabetical record of all transient merchants and the names and addresses of their registered agents.

(e) Whenever a transient merchant doing business or having done business in any county within this state shall fail to have or maintain a registered agent in the county, or whenever any such registered agent cannot with due diligence be found at his permanent address, the clerk of the superior court of said county shall be an agent of such transient merchant upon whom any such process, notice, or demand may be served. Service on the clerk of the superior court of any such process,

notice, or demand shall be made by delivering to and leaving with him, or any person designated by the clerk of the superior court to receive such service, duplicate copies of such process, notice, or demand. In the event such process, notice, or demand is served on the clerk of the superior court, he shall immediately cause one of such copies to be forwarded by registered or certified mail or statutory overnight delivery to the permanent address of said transient merchant. Any such service shall be answerable in not less than 30 days.

(f) Nothing contained in this Code section shall limit or affect the right to serve any process, notice, or demand in any other manner permitted by law. (Ga. L. 1980, p. 581, § 5; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to sub- section (e) is applicable with respect to notices delivered on or after July 1, 2000.

43-46-6. Exceptions to licensing requirements.

(a) The licensing provisions of this chapter shall not apply to any transient merchant engaged in business solely within a county which does not require the issuance of business licenses.

(b) The licensing provisions of this chapter shall not apply to any transient merchant engaged in business solely within the corporate limits of a municipality when:

- (1) Such municipality requires a transient business license; and
- (2) Said transient merchant has such license. (Ga. L. 1980, p. 581, § 6.)

OPINIONS OF THE ATTORNEY GENERAL

Legislative intent. — Legislature did not intend to require counties which do not issue business licenses to issue licenses to transient merchants. 1980 Op. Att'y Gen. No. U80-26.

Transient merchant who engages in

business in more than one county is not required to obtain a business license from any county in which the merchant does business but which does not require the issuance of business licenses. 1980 Op. Att'y Gen. No U80-26.

43-46-7. Penalty; violation of chapter as constituting an unfair or deceptive act.

(a) Any person, firm, or corporation who violates this chapter shall be guilty of a misdemeanor.

(b) In addition to the criminal penalty provided in subsection (a) of this Code section, any violation of this chapter shall constitute an unfair or deceptive act under Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices Act of 1975." (Ga. L. 1980, p. 581, § 7.)

CHAPTER 47

USED MOTOR VEHICLE AND USED MOTOR VEHICLE
PARTS DEALERS

Sec.		Sec.	
43-47-1.	Short title.	43-47-11.	Hearings before board as to suspension of or revocation of licenses.
43-47-2.	Definitions.	43-47-11.1.	Registration with commissioner of motor vehicle safety; application for dealer's registration plate.
43-47-3.	Creation of board; composition; terms of office; vacancies; election of chairperson; divisions.	43-47-12.	Maintenance of records by licensees; possession of vehicle or parts as evidence of purchase for resale.
43-47-4.	Division director as secretary of board.	43-47-13.	Local regulation and licensing.
43-47-5.	Reimbursement of board members.	43-47-14.	Fines for violation of chapter.
43-47-6.	General powers and duties of board.	43-47-15.	Compliance with "Motor Vehicle Certificate of Title Act" required.
43-47-7.	Required license; records.	43-47-16.	Licensees to furnish certain information to purchasers.
43-47-8.	License applications; prerequisites; license fees; renewal; training or test; supplemental licenses; bonds; insurance; suspension for conviction or false statement; meetings.	43-47-17.	Consent to inspection as condition of licensure.
43-47-8.1.	Penalty.	43-47-18.	Impoundment of used vehicles displayed for sale at unlicensed facilities.
43-47-8.2.	Place of business; temporary sites; penalties.	43-47-19.	Sales on consignment basis.
43-47-9.	Contents of licenses; display of licenses; endorsement of change of business location on licenses.	43-47-20.	Prior rules remain valid.
43-47-10.	(For effective date, see note.) Investigation of licensees by board; suspension or revocation of license; other sanctions.	43-47-21.	Civil penalty; civil actions; right of private action; persons already licensed to make changes at time of renewal of license.
		43-47-22.	Penalty; injunctions.

Cross references. — Motor vehicle chop shops, T. 16, C. 8, A. 4. Restrictions on location of junkyards, and screening and fencing requirements for junkyards, § 32-6-240 et seq. Requirements regard-

ing transfer of certificates of title by dealers in motor vehicles, § 40-3-32. Junk dealers, T. 43, C. 22. Scrap metal processors, T. 43, C. 43.

OPINIONS OF THE ATTORNEY GENERAL

Constitutionality under First Amendment. — Failure of O.C.G.A. Ch. 47, T. 43 to include an exemption for religious organizations does not violate

the First Amendment of the United States Constitution. 1999 Op. Att'y Gen. No. 99-8.

Neither the Secretary of State nor

the joint-secretary has authority superior to lawful directives of board. 1958-59 Op. Att'y Gen. p. 269.

One denied "dealer tags" for failure to register not entitled to refund of occupational tax. — One who has paid an occupational tax as a used car dealer but who is prohibited from receiving and using "dealer tags" because of a failure to register under Ga. L. 1958, p. 55, §§ 1, 12 (see O.C.G.A. §§ 43-47-7, 43-47-12) is not entitled to a refund of the occupational tax. 1969 Op. Att'y Gen. No. 69-167.

Antique used car dealers must register. — If seller of antique automobiles is a "used car dealer" as defined in Ga. L. 1958, p. 55, § 2 (see O.C.G.A. § 43-47-2), the seller must register and obtain a license as provided in Ga. L. 1958, p. 55, §§ 1, 12 (see O.C.G.A. §§ 43-47-7 and 43-47-12). 1969 Op. Att'y Gen. No. 69-386.

Church that accepts donations of used motor vehicles and resells the vehicles must be licensed as a used motor

vehicle dealer under O.C.G.A. Ch. 47, T. 43 unless the church would otherwise qualify for a statutory exemption. 1999 Op. Att'y Gen. No. 99-8.

Rental and leasing companies subject to regulation. — Rental and leasing companies which engage in the business of buying, selling, trading, soliciting, offering, displaying, or advertising the sale of used motor vehicles to licensed dealers or to consumers are regulated by O.C.G.A. Ch. 47, T. 43, unless otherwise exempted. 1981 Op. Att'y Gen. No. 81-51.

Auto rental or leasing company coming within the statutory definition of "wholesale used car dealer" or "retail used car dealer" is subject to the same regulation as any other used car dealer under O.C.G.A. Ch. 47, T. 43, unless the company can show that the company comes within an exception provided in former O.C.G.A. § 43-47-2(6)(B). 1981 Op. Att'y Gen. No. 81-51.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

Am. Jur. Trials. — Misrepresentation in Automobile Sales, 13 Am. Jur. Trials 253.

Automobile Warranty Litigation, 39 Am. Jur. Trials 1.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49

et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

Validity, construction, and application of statutes or ordinances licensing, or otherwise regulating, business of selling motor vehicles, 126 ALR 740; 57 ALR2d 1265; 7 ALR3d 1173.

Constitutionality, construction, and application of statutes or other regulations regarding sale or offer for sale of used automobiles, 134 ALR 647.

Practices forbidden by state deceptive trade practice and consumer protection acts, 89 ALR3d 449.

Validity, construction, and application of state statutes regulating dealings between automobile manufacturers, dealers, and franchisees, 82 ALR4th 624.

Who is "automobile manufacturer" for purposes of the Automobile Dealers Day in Court Act (15 U.S.C.S. § 1221 et seq.), 51 ALR Fed. 812.

43-47-1. Short title.

This chapter shall be known and may be cited as the "Used Motor Vehicle Dealers' and Used Motor Vehicle Parts Dealers' Registration Act." (Ga. L. 1958, p. 55, § 1; Ga. L. 1995, p. 441, § 1; Ga. L. 1999, p. 81, § 43.)

JUDICIAL DECISIONS

Act not applicable to buyers' suit against dealer. — Used Motor Vehicle Dealers' and Used Motor Vehicle Parts Dealers' Act, O.C.G.A. § 43-47-1 et seq., did not apply in a suit by auto buyers

against a dealer and finance company claiming failure to disclose a finance charge. *Chancellor v. Gateway Lincoln-Mercury, Inc.*, 233 Ga. App. 38, 502 S.E.2d 799 (1998).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 161 et seq.

C.J.S. — 61A C.J.S., Motor Vehicles, § 715 et seq.

43-47-2. Definitions.

As used in this chapter, the term:

(1) "Board" means the State Board of Registration of Used Motor Vehicle Dealers and Used Motor Vehicle Parts Dealers.

(2) "Dismantler" means any person, partnership, limited liability company, firm, or corporation engaged in the business of acquiring wrecked, abandoned, or reparable motor vehicles and selling either the usable parts, the motor vehicle as a unit, or the hulk of the motor vehicle after the usable parts have been removed. Without limiting any of the foregoing, for the purposes of this chapter, a person, partnership, limited liability company, firm, or corporation shall be presumed to be engaged in the business of auto dismantling if he, she, or it possesses ten or more inoperative motor vehicles for more than 45 days unless such vehicles are scrap vehicles being held by a scrap metal processor for recycling scrap metal, vehicles awaiting repairs being held by a repair business, or vehicles being held for other reasons as may be prescribed by the board.

(3) "Established place of business" means a salesroom or sales office in a building or on an open lot of a retail used car dealership or at which a permanent business of bartering, trading, offering, displaying, selling, buying, dismantling, or rebuilding wrecked or used motor vehicles or parts is carried on, or the place at which the books, records, and files necessary to conduct such business are kept. Each such place of business shall be furnished with a working telephone

listed in the name of the licensee for use in conducting the business and shall be marked by an appropriate permanent sign as prescribed by the appropriate division under this chapter.

(4) "Financial institution" means a finance company or a banking institution or any subsidiary of a finance company or banking institution which engages solely in the financing or leasing of motor vehicles. Such term shall not mean a pawnbroker as such term is defined in Code Section 44-12-130.

(5) "Licensee" means any person who is required to be licensed or who is actually licensed under this chapter.

(6) "Major component part" means one of the subassemblies of a motor vehicle as defined in paragraph (9) of Code Section 40-3-2.

(7) "Motor vehicle" or "car" means every vehicle which is self-propelled and required to be registered under the laws of this state, except trackless trolleys (which are classified as streetcars), airplanes, motorboats, motorcycles, motor driven cycles, or go-carts.

(8) "Motor vehicle broker" means a person who, for a commission or with the intent to make a profit or gain of money or other thing of value, negotiates or attempts to negotiate the sale of a motor vehicle on behalf of another. Such term shall not mean any person engaged in the solicitation, negotiation, or advertising of the sale of used motor vehicles or any owner of real property who allows the display of used motor vehicles on such property if the sale of such vehicles is made by a used car dealer or a financial institution.

(9) "Part" means any used motor vehicle part that has been installed as standard or optional equipment on a motor vehicle, has been removed from the motor vehicle on which it was originally attached or affixed, and is the subject of sale or resale as a part and not as scrap.

(10) "Person" means any individual, partnership, limited liability company, firm, association, corporation, or combination of individuals of whatever form or character.

(11) "Rebuilder" means any person, partnership, limited liability company, firm, or corporation engaged in the business of buying more than two salvage or wrecked motor vehicles per year for the purpose of restoring or rebuilding them with used or new motor vehicle parts, or both, to be sold as motor vehicles.

(12) "Salvage dealer" means any person, firm, or corporation who purchases a salvage vehicle or parts of a salvage vehicle for purposes of resale as parts only or as salvage.

(13) Reserved.

(14) "Salvage vehicle" means any vehicle which:

(A) Has been damaged, crushed, or otherwise reduced to such a state that its restoration would require the replacement of two or more major component parts;

(B) Has been acquired by an insurance company as a result of the vehicle's being damaged to the extent that its restoration to an operable condition would require the replacement of two or more major component parts or for which the insurance company has paid a total loss claim, excluding recovered total theft vehicles which do not require the replacement of two or more major component parts for restoration; or

(C) Is an imported vehicle which has been damaged in shipment and disclaimed by the manufacturer as a result of the damage, has never been the subject of a retail sale to a consumer, and has never been issued a certificate of title.

(15) "Scrap vehicle" means any vehicle which has been wrecked, destroyed, or damaged to the extent that it cannot be economically repaired, rebuilt, or made operable or roadworthy.

(15.1) "Temporary site" means a location at which used motor vehicles are sold or offered for sale for which a temporary site permit has been issued by the board in accordance with Code Section 43-47-8.2 and which location is:

(A) Used for a period not to exceed 96 hours in any 30 day period of time;

(B) Located in the county in which the established place of business of the used motor vehicle dealer using the temporary site is located or an adjoining county; and

(C) Used not more than three times in any calendar year.

(16) "Used motor vehicle" or "used car" means any motor vehicle or car other than a motor vehicle which has never been the subject of a retail sale by a new motor vehicle dealer or a used motor vehicle dealer and which is the subject of a retail sale to a consumer for his or her own use or of a resale to another licensed dealer.

(17)(A) "Used motor vehicle dealer," "used car dealer," or "licensee" means any person who, for commission or with intent to make a profit or gain of money or other thing of value, sells, exchanges, rents with option to purchase, offers, or attempts to negotiate a sale or exchange of an interest in used motor vehicles or who is engaged wholly or in part in the business of selling used motor vehicles, whether or not such motor vehicles are owned by such person. A motor vehicle wholesaler and a motor vehicle broker shall be

deemed to be a used motor vehicle dealer or a used car dealer for the purposes of this chapter. Any independent motor vehicle leasing agency which sells or offers for sale used motor vehicles shall be deemed to be a used motor vehicle dealer or a used car dealer for the purposes of this chapter. Any motor vehicle auction company selling or offering for sale used motor vehicles to independent motor vehicle dealers or to individual consumers shall be deemed to be a used motor vehicle dealer or used car dealer for the purposes of this chapter except as otherwise provided in division (x) of subparagraph (B) of this paragraph. Without limiting any of the foregoing, the sale of five or more used motor vehicles in any one calendar year shall be prima-facie evidence that a person is engaged in the business of selling used motor vehicles. A pawnbroker who disposes of all repossessed motor vehicles by selling or exchanging his or her interest in such motor vehicles only to licensees under this chapter shall not be considered a used motor vehicle dealer under this chapter as long as such pawnbroker does not otherwise engage in activities which would bring him or her under the licensing requirements of this chapter.

(B) Used motor vehicle dealer or used car dealer does not include:

(i) Franchised motor vehicle dealers and their wholly owned and controlled subsidiaries operating in the county in which their franchise is located or operating as a direct dealer of a manufacturer;

(ii) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court;

(iii) Public officers while performing their official duties;

(iv) Persons disposing of motor vehicles acquired for their own use when the same shall have been acquired and used in good faith and not for the purpose of avoiding the provisions of this chapter. Evidence of good faith, as provided in this division, shall consist of the fact that the vehicle is properly titled and registered in the name of the transferor;

(v) Financial institutions when the financial institution sells its repossessed or leased motor vehicles. Finance companies, for purposes of this chapter, shall not include a pawnbroker as defined in Code Section 44-12-130;

(vi) Insurance companies who sell motor vehicles to which they have taken title as an incident of payments made under policies of insurance;

(vii) Persons, firms, or corporations who act as agents for insurance companies for the purpose of soliciting insurance for motor vehicles;

(viii) Persons, firms, or corporations engaged in a business other than as a used car dealer, as defined in divisions (i) through (vii) of this subparagraph, who sell motor vehicles traded in as a part of the purchase price of an article other than a motor vehicle and which have not been acquired by direct purchase for cash, and which business is not for the purpose of violating this chapter;

(ix) Persons, firms, or corporations which sell only vehicles which will not be used primarily for transportation purposes, including, but not limited to, antique automobiles, classic automobiles, and automobiles sold solely as speculative investments. In determining whether a vehicle or vehicles will not be used primarily for transportation purposes, the board may rely on the representations, written or oral, made regarding the vehicles, but may also look at any other relevant evidence; or

(x) Persons licensed or companies registered under Chapter 6 of this title, relating to auctioneers, when auctioning used motor vehicles which are being disposed of under administration of an estate or when auctioning used motor vehicles and real property at the same sale when such vehicles and property are owned by a common owner.

(18) “Used motor vehicle parts dealer” or “used parts dealer” means any person, partnership, limited liability company, firm, or corporation buying, selling, or using motor vehicle parts, either as a used motor vehicle parts dealer, a motor vehicle dismantler, a motor vehicle rebuilder, a salvage pool dealer, or a salvage dealer.

(19) “Wholesaler” means a person who sells or distributes used motor vehicles to motor vehicle dealers in this state, has a sales representative in this state, or controls any person who offers for sale, sells, or distributes any used motor vehicles to motor vehicle dealers in this state. (Ga. L. 1958, p. 55, § 2; Ga. L. 1968, p. 23, §§ 1, 2; Ga. L. 1980, p. 1286, § 1; Ga. L. 1983, p. 550, § 1; Ga. L. 1988, p. 1504, § 1; Ga. L. 1989, p. 154, § 1; Ga. L. 1990, p. 1032, § 1; Ga. L. 1991, p. 983, §§ 1, 2; Ga. L. 1993, p. 123, § 59; Ga. L. 1994, p. 1060, § 1; Ga. L. 1995, p. 441, § 1; Ga. L. 1997, p. 530, § 1; Ga. L. 1998, p. 128, § 43; Ga. L. 1998, p. 1662, §§ 1, 2; Ga. L. 2004, p. 452, § 4; Ga. L. 2005, p. 321, § 5/HB 455; Ga. L. 2006, p. 465, § 3/HB 1052; Ga. L. 2008, p. 835, § 8/SB 437; Ga. L. 2011, p. 752, § 43/HB 142.)

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, deleted and reserved former paragraph (13), which

read: "Salvage pool" or "salvage disposal sale" means a sale at auction or by private bid of wrecked or repairable motor vehicles, either at wholesale or retail, by insurance companies, underwriters, or dealers."; and in subparagraph (17)(A), substituted "A pawnbroker" for "Financial institutions as used in this chapter shall

not include a pawnbroker as defined in Code Section 44-12-130; provided, however, that a pawnbroker" at the beginning of the last sentence.

Law reviews. — For note on 1989 amendment to this Code section, see 6 Georgia St. U.L. Rev. 312 (1989).

JUDICIAL DECISIONS

Automobile leased as "used demo" was "new car". — Automobile leased by plaintiffs from defendant dealer as a "used demo" was a "new" car, not a "used" car, and the fact that the car was previously titled to the dealer's son-in-law did not create an issue of fraud in violation of the Fair Business Practices Act, O.C.G.A. § 10-1-390 et seq. *Toirkens v. Willett Toyota, Inc.*, 192 Ga. App. 109, 384 S.E.2d 218 (1989).

Automobile used as demonstrator was "new car." — In an action alleging violations of the Fair Business Practices Act, O.C.G.A. § 10-1-390 et seq., because

the van leased to plaintiffs was always titled in the dealer and was never the subject of a retail sale or lease, the van was a "new car." The dealer did not engage in fraudulent or unfair business practices by listing the van as "new", even though the van had been driven as a demonstrator and had been in a collision. *Kondo v. Marietta Toyota, Inc.*, 224 Ga. App. 490, 480 S.E.2d 851 (1997).

Cited in Georgia Franchise Practices Comm'n v. Massey-Ferguson, Inc., 244 Ga. 800, 262 S.E.2d 106 (1979); *Chancellor v. Gateway Lincoln-Mercury, Inc.*, 233 Ga. App. 38, 502 S.E.2d 799 (1998).

OPINIONS OF THE ATTORNEY GENERAL

Antique used car dealers must register. — If seller of antique automobiles is a "used car dealer" as defined in Ga. L. 1958, p. 55, § 2 (see O.C.G.A. § 43-47-2), the seller must register and obtain a license as provided in Ga. L. 1958, p. 55, §§ 1, 13 (see O.C.G.A. §§ 43-47-7 and 43-47-12). 1969 Op. Att'y Gen. No. 69-386.

Franchised motor vehicle dealer solely engaged in the sale of used cars at a temporary location in a county outside the county in which the franchise is located is a used motor vehicle dealer and is subject to the licensure requirements of the Used Motor Vehicle Dealers' and Used Motor Vehicle Parts Dealers' Registration Act, O.C.G.A. § 43-47-1 et seq. 2001 Op. Att'y Gen. No. 2001-7.

"Auto broker" required to register and obtain license. — An "auto broker" who engages in the business of soliciting, offering, displaying, or advertising the sale of used motor vehicles was a "retail used car dealer" within the meaning of former subdivision (6)(A)(i) and must register and obtain a license from the Georgia

State Board of Registration of Used Car Dealers. 1981 Op. Att'y Gen. No. 81-10 (decided prior to 1983 amendment).

Sale of rebuilt vehicles. — Licensed used motor vehicle rebuilder may sell vehicles which the rebuilder rebuilds without also being registered as a used car dealer as the sale of such vehicles is incidental to their rebuilding under the rebuilder's license. 1988 Op. Att'y Gen. No. 88-28.

Used motor vehicle parts dealer. — Licensed used motor vehicle parts dealer can transfer salvage titles without being licensed as a used motor vehicle dealer provided that such dealer complies with the Motor Vehicle Certificate of Title Act, O.C.G.A. § 40-3-1 et seq., and rules and regulations of the State Revenue Commissioner relating to salvage vehicles. 1998 Op. Att'y Gen. No. 98-14.

Auto rental or leasing company subject to same regulation as any other used car dealer. — An auto rental or leasing company coming within the statutory definition of "wholesale used car

dealer" or "retail used car dealer" was subject to the same regulation as any other used car dealer under O.C.G.A. Ch. 47, T. 43, unless the company could show that the company came within an exception provided in former subparagraph (6)(B). 1981 Op. Att'y Gen. No. 81-51 (decided prior to 1983 amendment).

Only distinction made between wholesale and retail dealers is that a retail dealer must maintain an established place of business which must be shown on the retail dealer's license application, whereas a wholesale dealer need not maintain such an establishment. 1971 Op. Att'y Gen. No. 71-163 (decided prior to 1983 amendment).

Established place of business must be physically separated from any other business. — Provision contained

in O.C.G.A. § 43-47-2(2) requiring a retail used car dealer to maintain an established place of business "physically separated from any other business," means that any business of the dealer, other than that at which the bartering, trading, and selling of used motor vehicles takes place, must be "physically separated" from the "established place of business." 1981 Op. Att'y Gen. No. 81-9.

Phrase, "any other business," includes a related subsidiary business operated by the retail dealer, such as a body shop. 1981 Op. Att'y Gen. No. 81-9.

Phrase, "any other business," refers to any business other than one at which a permanent business of bartering, trading, and selling of used motor vehicles will be carried on. 1981 Op. Att'y Gen. No. 81-9.

43-47-3. Creation of board; composition; terms of office; vacancies; election of chairperson; divisions.

(a) There is created a State Board of Registration of Used Motor Vehicle Dealers and Used Motor Vehicle Parts Dealers. The board shall be comprised of 15 members:

- (1) Three members shall be independent used car dealers;
- (2) Three members shall be appointed from the public at large and shall have no connection whatsoever with the sale of used cars or parts;
- (3) The state revenue commissioner, or a designated agent, shall be a permanent ex officio member and shall be authorized to vote on all matters before the board;
- (4) The administrator of Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices Act of 1975," or a designated agent, shall be a permanent ex officio member and shall be authorized to vote on all matters before the board;
- (5) One member shall be a representative of the automobile auction industry;
- (6) One member shall be an auto salvage pool operator;
- (7) Two members shall be used motor vehicle parts dealers who are not rebuilders;
- (8) One member shall be a rebuilder;

(9) One member shall be a pawnbroker as defined in Code Section 44-12-130 who is in the business of pawning automobile titles and is licensed as a used car dealer; and

(10) One member shall be a representative of the automobile insurance industry.

(b) The members of the board referred to in paragraphs (1), (2), (5), (6), (7), (8), (9), and (10) of subsection (a) of this Code section shall be appointed by the Governor and shall take office on July 1, 1995, or as soon thereafter as appointed. The initial terms of those 13 appointed members shall expire as follows: three on June 30, 1996; three on June 30, 1997; three on June 30, 1998; and four on June 30, 1999. Thereafter, the appointed members of the board shall serve terms of four years. All members shall be residents of this state. No more than two of the appointed members shall be from the same congressional district. The terms of the two ex officio members shall be coextensive with their terms of office.

(c) Any vacancies on the board shall be filled by the Governor for the remainder of the unexpired term. The members of the board shall annually elect one of their number to serve as chairperson for a term of two years. The board chairperson shall not also serve contemporaneously as the chairperson of either division under this chapter. The first term as chairperson of the board shall be served by a member or members elected from either division under this chapter; thereafter, the chairperson for each succeeding term shall not be elected from the same division as that of the chairperson from the immediately preceding term. In the event a chairperson of the board is unable to complete his or her term, his or her successor for the remainder of the term shall be elected from the same division as was the chairperson who is unable to complete the term. The chairperson of the board shall be an ex officio member of both divisions under this chapter, however, the chairperson of the board shall not be counted for purposes of determining whether a quorum is present in the division meeting for the division in which he or she is not a regular member.

(d)(1) The board shall be composed of two divisions, a used car division and a used parts division.

(2) The members of the used car division shall be the three independent used car dealers, two of the members from the public at large, the state revenue commissioner or a designated agent, the administrator of Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices Act of 1975," or a designated agent, the representative of the automobile auction industry, and the pawnbroker. All powers and duties relating to used car dealers which are not specifically reserved to the board shall be assigned to the used car

division. The used car division shall elect one of its members to serve as chairperson of the division for a period of one year.

(3) The members of the used parts division shall be the third member from the public at large, the state revenue commissioner or a designated agent, the auto salvage pool operator, the two used motor vehicle parts dealers who are not rebuilders, the rebuilder, and the representative of the automobile insurance industry. All powers and duties relating to used parts dealers which are not specifically reserved to the board shall be assigned to the used parts division. The used parts division shall elect one of its members to serve as chairperson of the division for a period of one year.

(4) The chairperson of the board shall determine which of the two members from the public at large will serve in the used car division and which shall serve in the used parts division. (Ga. L. 1980, p. 1286, § 1; Ga. L. 1988, p. 1504, § 2; Ga. L. 1989, p. 154, § 2; Ga. L. 1990, p. 1903, § 9; Ga. L. 1990, p. 2423, § 1; Ga. L. 1994, p. 1060, § 2; Ga. L. 1995, p. 441, § 1; Ga. L. 1996, p. 6, § 43; Ga. L. 2002, p. 415, § 43; Ga. L. 2005, p. 334, § 25-4/HB 501.)

Editor's notes. — Ga. L. 1995, p. 441, § 3, not codified by the General Assembly, repeals Ga. L. 1994, p. 1060, which was to amend subsections (a) and (b) of this Code section effective July 1, 1995.

Law reviews. — For note on 1989 amendment to this Code section, see 6 Georgia St. U.L. Rev. 312 (1989).

43-47-4. Division director as secretary of board.

The division director shall be the secretary of the board and of the divisions. He or she shall issue licenses and certificates and perform such other duties as the board or the divisions may direct to carry out this chapter. (Ga. L. 1958, p. 55, § 5; Ga. L. 1995, p. 441, § 1; Ga. L. 2000, p. 1706, § 19.)

43-47-5. Reimbursement of board members.

The members of the board shall be reimbursed for their duties as board members and as division members as provided for in subsection (f) of Code Section 43-1-2. (Ga. L. 1958, p. 55, § 6; Ga. L. 1981, p. 767, § 1; Ga. L. 1995, p. 441, § 1.)

43-47-6. General powers and duties of board.

All powers and duties under this chapter not specifically reserved to the board shall be the powers and duties of the division. The board shall have the following powers and duties:

- (1) To receive applications for registration of licensees and to forward them to the appropriate division;

(2) To make such rules and regulations as may be necessary to effectuate the administration and enforcement of this chapter;

(3) To arrange for all new applicants to have a criminal background check, which background check shall be mandatory. The applicant's fingerprints shall be forwarded to the Georgia Crime Information Center which shall run a criminal background check on the applicant and provide the results of the background check to the board. Additionally, the applicant's fingerprints will be forwarded to the Federal Bureau of Investigation for a national criminal history record check;

(4) To publish in print or electronically on or before September 1 of each year an alphabetical listing of all licensees pursuant to this chapter and to distribute copies of the same, if requested, to the Department of Public Safety, the Department of Revenue, and the Georgia Bureau of Investigation, to all sheriffs in this state, and to all county and municipal police departments in this state;

(5) To establish a fee for a license for each principal place of business and a fee for a supplemental license for each place of business not immediately adjacent to the principal place of business. The board may establish separate schedules of fees for such licenses depending on whether the applicant begins to do business as a licensee prior to or after the issuance of any such license; and

(6) To do all other things necessary and proper to carry out the powers and duties listed in this Code section. (Ga. L. 1958, p. 55, § 7; Ga. L. 1968, p. 23, § 5; Ga. L. 1981, p. 767, § 2; Ga. L. 1987, p. 369, § 1; Ga. L. 1995, p. 441, § 1; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted "in print or electronically" in paragraph (4).

Administrative rules and regulations. — Rules of the profession, Official

Compilation of the Rules and Regulations of the State of Georgia, Rules of State Board of Registration of Used Car Dealers, Chapter 680-1 et seq.

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Board's remedies against violators. — Board may use, in addition to the board's authority to revoke, suspend, or refuse licenses, the injunctive remedy provided for in Ga. L. 1958, p. 55, § 14 (see O.C.G.A. § 43-47-15) to enjoin any violation of the provisions of this chapter (see O.C.G.A. Ch. 47, T. 43); violators are also subject to prosecution under the misdemeanor provision of former Code 1933, § 84-9965 (see O.C.G.A. § 43-47-22). 1958-59 Op. Att'y Gen. p. 269.

When documents deposited or filed in public office are public records. — Mere fact that a document is deposited or filed in a public office, or with a public officer, or is in the custody of a public officer, does not make the document a public record; the crucial aspect which makes applications and related materials subject to public scrutiny is the necessity for the board to keep these documents in the discharge of the board's proper duty. 1976 Op. Att'y Gen. No. 76-126.

Licensure applications submitted to board and their necessary parts are public records and, therefore, applications and related material become state records open to public scrutiny when the applications are received by the board; financial statements submitted are a nec-

essary part of this application and are, therefore, open for public inspection; and it would not be permissible for the board to return financial statements to the applicant without subjecting the statements to public scrutiny. 1976 Op. Att'y Gen. No. 76-126.

43-47-7. Required license; records.

(a) It shall be unlawful for any person to operate as a used motor vehicle dealer in this state without first registering and obtaining a license from the used car division as provided in this chapter.

(b) It shall be unlawful for any person to operate as a used motor vehicle parts dealer in this state without first registering and obtaining a license from the used parts division as provided in this chapter.

(c) It shall be unlawful for any used car dealer or any used parts dealer willfully to fail to keep the records required to be kept by this chapter. (Ga. L. 1958, p. 55, § 3; Ga. L. 1968, p. 23, § 3; Ga. L. 1983, p. 550, § 2; Ga. L. 1988, p. 1504, § 3; Ga. L. 1989, p. 14, § 43; Ga. L. 1989, p. 154, § 3; Ga. L. 1995, p. 441, § 1.)

Law reviews. — For note on 1989 amendment to O.C.G.A. § 43-47-7, see 6 Georgia St. U.L. Rev. 312 (1989).

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Antique used car dealers who must register. — If seller of antique automobiles is a “used car dealer” as defined in Ga. L. 1958, p. 55, § 2 (see O.C.G.A. § 43-47-2), the seller must register and obtain a license as provided in Ga. L. 1958, p. 55, §§ 3 and 13 (see O.C.G.A. §§ 43-47-7 and 43-47-12). 1969 Op. Att'y Gen. No. 69-386.

Franchised motor vehicle dealer solely engaged in the sale of used cars at a temporary location in a county outside the county in which the franchise is located is a used motor vehicle dealer and is subject to the licensure requirements of the Used Motor Vehicle Dealers' and Used Motor Vehicle Parts Dealers' Registration Act, O.C.G.A. § 43-47-1 et seq. 2001 Op. Att'y Gen. No. 2001-7.

“Auto broker” required to register and obtain license. — An “auto broker” who engages in the business of soliciting, offering, displaying, or advertising the

sale of used motor vehicles was a “used car dealer” within the meaning of former O.C.G.A. § 43-47-2(6)(A)(i) and had to register and obtain a license from the Georgia State Board of Registration of Used Car Dealers. 1981 Op. Att'y Gen. No. 81-10.

Licensed auctioneers who sell used motor vehicles on consignment must also be licensed as used car dealers unless such sales are made by a used car dealer or a financial institution. Auction companies which auction used motor vehicles on consignment must also be registered as used car dealers if such sales are made to independent motor vehicle dealers or to individual consumers. 1991 Op. Att'y Gen. No. 91-15.

One denied “dealer tags” for failing to register not entitled to refund of occupational tax. — Person who has paid the occupational tax as a used car dealer but who is prohibited from receiv-

ing and using "dealer tags" because that person failed to register under Ga. L. 1958, p. 55, § 3 or § 13 (see O.C.G.A.

§ 43-47-7 or O.C.G.A. § 43-47-12) is not entitled to a refund of the occupational tax. 1969 Op. Att'y Gen. No. 69-167.

RESEARCH REFERENCES

ALR. — Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

43-47-8. License applications; prerequisites; license fees; renewal; training or test; supplemental licenses; bonds; insurance; suspension for conviction or false statement; meetings.

(a) Applications for a license shall be made to the board, shall contain the information required by this chapter, and shall be accompanied by the fee prescribed by the board. Each applicant for a new license shall submit to the board such information as may be required by the Georgia Crime Information Center and by the Federal Bureau of Investigation, including classifiable sets of fingerprints, an affidavit by the applicant disclosing the date and nature of any conviction for the violation of any crime involving violence, a used motor vehicle, illegal drugs, tax evasion, failure to pay taxes, or any crime involving the illegal use, carrying, possession of a dangerous weapon, or moral turpitude, and such fees as may be set by the Georgia Crime Information Center and by the Federal Bureau of Investigation for a records check comparison by the Georgia Crime Information Center and by the Federal Bureau of Investigation. Application for a license under this chapter shall constitute consent for performance of a records check comparison.

(b) A division under this chapter shall not issue or renew any license unless the applicant or holder thereof shall show that he or she maintains an established place of business as defined in Code Section 43-47-2.

(c) All licenses issued under this chapter shall be renewable biennially. The divisions may establish continuing education requirements for license renewals.

(d) Each division may require either that within the preceding year the applicant has attended a training and information seminar approved by the division or that the applicant has passed a test approved by the division. Such seminar or test, if required, shall include, but shall not be limited to, dealer requirements of this chapter, including books and records to be kept; requirements of the Department of Revenue; and such other information as in the opinion of the division

will promote good business practices. No seminar shall exceed one day in length.

(e) Supplemental licenses shall be issued for each place of business operated or proposed to be operated by the licensee that is not contiguous to other premises for which a license is issued.

(f) Each application for a license shall also show that the licensee has obtained, or has applied for, a certificate of registration, Department of Revenue Form ST-2, commonly known as a sales tax number certificate. The board shall not renew any license unless the applicant or holder thereof shall show that he or she maintains a certificate of registration, Department of Revenue Form ST-2, under the laws of this state providing for issuance of such certificates.

(g) Each application for a license shall show that the prospective licensee has or has made provision for a bond. The required bond shall be executed with a surety company duly authorized to do business in this state and shall be payable to the Governor for the use and benefit of any purchaser and vendees or successors in title of any used motor vehicle and shall be conditioned to pay all loss, damages, and expenses that may be sustained by such purchaser, his or her vendees, or successors in title that may be occasioned by reason of any misrepresentation, deceptive practice, or unfair practice or by reason of any breach of warranty as to such used vehicle.

(h) The bond shall be in the amount of \$35,000.00 for used car dealers and \$10,000.00 for used parts dealers and shall be filed, immediately upon the granting of the license, with the division director by the licensee and shall be approved by the division director as to form and as to the solvency of the surety. The prospective licensee may file the required bond with the division director for the division director's approval prior to the granting of a license.

(i) No licensee shall cancel, or cause to be canceled, a bond issued pursuant to this Code section unless the appropriate division is informed in writing by a certified letter at least 30 days prior to the proposed cancellation.

(j) If the surety or licensee cancels the bond and the licensee fails to submit, within ten days of the effective date of the cancellation, a new bond, the division may revoke his or her license.

(k) Each application for a license shall show that the licensee maintains public liability and property damage insurance with liability limits of not less than \$50,000.00 per person and \$100,000.00 per accident, personal insurance liability coverage, and \$25,000.00 property damage liability coverage. Any licensee under Chapter 6 of this title shall be exempt from the requirements of this subsection.

(l) Each division may authorize the division director to issue a license when he or she has received the bond required by subsections (g) and (h) of this Code section, the proof of insurance required by subsection (k) of this Code section, and a fingerprint card for submission to the Georgia Crime Information Center and to the Federal Bureau of Investigation. Each completed application for a permanent license shall be reviewed by the appropriate division, which may deny licensure for any good reason under this chapter. Any other provision of law to the contrary notwithstanding, each applicant for a license pursuant to the provisions of this Code section shall agree in the application that if the applicant makes a false statement on the application or if the criminal record check returned from the Georgia Crime Information Center or from the Federal Bureau of Investigation reveals a conviction of or an entry of a plea of *nolo contendere* to a crime involving the use of violence, a used motor vehicle, or illegal drugs; tax evasion or failure to pay taxes; any crime involving the illegal use or possession of a dangerous weapon; or any crime involving moral turpitude, then the division shall be authorized to suspend the license without a prior hearing. The divisions shall each meet as needed, in their discretion. The board shall meet at least once each quarter and upon the call of the board chairperson for any special sessions. (Ga. L. 1958, p. 55, § 8; Ga. L. 1960, p. 801, § 1; Ga. L. 1960, p. 980, § 1; Ga. L. 1968, p. 23, § 8; Ga. L. 1974, p. 1240, § 1; Ga. L. 1983, p. 550, §§ 3, 4; Ga. L. 1984, p. 22, § 43; Ga. L. 1985, p. 975, § 1; Ga. L. 1987, p. 369, § 2; Ga. L. 1988, p. 1504, § 4; Ga. L. 1991, p. 983, § 3; Ga. L. 1992, p. 2450, §§ 2, 3; Ga. L. 1995, p. 441, § 1; Ga. L. 1996, p. 6, § 43; Ga. L. 2000, p. 1706, § 19; Ga. L. 2002, p. 415, § 43; Ga. L. 2005, p. 334, § 25-5/HB 501; Ga. L. 2006, p. 688, § 1/HB 1075; Ga. L. 2010, p. 266, § 44/SB 195.)

The 2010 amendment, effective May 20, 2010, deleted “and administered by the division director” following “division” at the end of the first sentence of subsection (d); and deleted “in writing” following “agree” in the third sentence of subsection (l).

Cross references. — Ad valorem tax-

ation of motor vehicles owned and held by dealers for retail sale, § 48-5-472.

Editor’s notes. — Ga. L. 2006, p. 688, § 2, not codified by the General Assembly, provides that the amendment to this Code section shall be applicable to bond renewals on or after January 1, 2007.

JUDICIAL DECISIONS

Holder of security interests not protected by bond. — Bond requirement of O.C.G.A. Ch. 47, T. 43 was not intended to require a bond to provide for the benefit of, nor to make moneys available to, a holder of security interests in motor vehicles, having possession of certificates of title for those vehicles, who

purchased such security interest, and obtained such certificates of title from a used car dealer, for damages sustained by the security interest holder as a result of fraudulent acts by the used car dealer. Specifically, the holder of a security interest is not a purchaser, vendee, or successor in title, within the meaning of

O.C.G.A. § 43-47-8(h), to any of the used motor vehicles in question and is not among those classes of persons protected and entitled to be indemnified by a bond executed pursuant thereto. *Wooten v.*

G.M.H. Auto Sales, Inc., 187 Ga. App. 331, 370 S.E.2d 165 (1988).

Cited in *Gibbs v. Jack Daniel Auto Sales, Inc.*, 163 Ga. App. 479, 294 S.E.2d 696 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Only distinction made between wholesale and retail dealer is that retail dealers must maintain an established place of business which must be shown on the retail dealer's license application, whereas a wholesale dealer need not maintain such an establishment. 1971 Op. Att'y Gen. No. 71-163 (decided prior to 1983 amendment of § 43-47-2).

Each type of used car dealer should receive equal treatment and consideration from the board in all circumstances with the single exception of requiring an established place of business for retail dealers. 1971 Op. Att'y Gen. No. 71-163 (decided prior to 1983 amendment of § 43-47-2).

Board may invite representatives of other entities to participate in monthly seminar. — State Board of Registration of Used Car Dealers may invite representatives of other entities, including trade associations, to participate in the board's monthly seminar so long as the ultimate responsibility for conducting (now "approving") the seminar remains with the board. 1983 Op. Att'y Gen. No. 83-69 (decided prior to 1987 amendment).

Surplus line insurance unacceptable for bond requirement. — Board may not accept surplus line insurance in

lieu of the surety bond required by O.C.G.A. § 43-47-8(h) for proper licensure. 1994 Op. Att'y Gen. No. 94-5.

Separate license not needed for each place of business. — Under former law, persons licensed as used motor vehicle parts dealers did not have to apply for separate licenses for each place of business but were issued supplemental licenses for each location. 1989 Op. Att'y Gen. No. 89-58.

Dealer may auction wrecked or reparable motor vehicles without registering. — Under former law, a licensed used motor vehicle parts dealer could auction wrecked or reparable motor vehicles without also being registered with the Georgia Auctioneers Commission as auctioning is incidental to the practice of a salvage pool dealer. However, a dealer could not auction items other than wrecked or reparable motor vehicles without an auction company license. 1989 Op. Att'y Gen. No. 89-58.

Entity possessing both licenses must maintain separate bonds under each. — Under former law, a person or company possessing both a used motor vehicle parts dealer's license and an auction company's license was required to maintain separate bonds under each license. 1989 Op. Att'y Gen. No. 89-58.

RESEARCH REFERENCES

ALR. — Validity of statute or ordinance which requires liability or indemnity insurance or bond as condition of license to conduct business or profession, 120 ALR 950.

Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

43-47-8.1. Penalty.

Any person who violates any provision of Code Section 40-2-39.1 shall be deemed to be a licensee for the purpose of imposing sanctions and penalties under this chapter and for the purpose of granting the board

jurisdiction over such violator. (Code 1981, § 43-47-8.1, enacted by Ga. L. 1998, p. 1662, § 3; Ga. L. 2007, p. 214, § 1/HB 144.)

Cross references. — Registration and licensing of motor vehicles, T. 40, C. 2. Certificates of title, security interests, and liens, T. 40, C. 3. Abandoned motor vehicles, T. 40, C. 11.

Editor's notes. — Ga. L. 2007, p. 214, § 4, not codified by the General Assembly,

provides: "This Act shall be effective on July 1, 2007. Prosecutions for or cases involving any violation of law occurring prior to the effective date of this Act shall not be affected by the repeals or amendments made by it or abated by reason thereof."

43-47-8.2. Place of business; temporary sites; penalties.

(a) A used motor vehicle dealer shall not engage in any activity as a used motor vehicle dealer except at such dealer's established place of business which has been registered under Code Section 40-2-38, at temporary sites not more than three times in any one calendar year, or at a licensed auto auction or any licensed facility. This subsection shall not be construed to prohibit a used motor vehicle dealer from delivering a vehicle off site, provided that the transaction is initiated from an established place of business under this chapter.

(b)(1) At least 60 days prior to opening a sale at a temporary site, a used motor vehicle dealer must make application to the board for a temporary site permit. A separate application must be submitted for every temporary site sale.

(2) To be eligible for a temporary site permit, a used motor vehicle dealer must be registered as required by Code Section 40-2-38. In order to obtain a temporary site permit, a used motor vehicle dealer must provide, on a form promulgated by the board:

(A) The address, including county, of the used motor vehicle dealer's established place of business;

(B) The address, including county, of the proposed temporary site location;

(C) The dates and hours of the temporary site sale;

(D) The number of temporary site sales already conducted by the used motor vehicle dealer during the calendar year in which the requested temporary site sale is to occur; and

(E) The name, address, and contact person of any sponsors, promoters, and lending institutions involved in or to be represented at the temporary site sale.

(3) As part of the application, a used motor vehicle dealer must submit written documentation demonstrating that the used motor vehicle dealer has complied with any licensing requirements appli-

cable in the local jurisdiction in which the temporary site sale will occur and a copy of a written agreement with the owner of the real property where this sale will occur.

(4) A temporary site permit issued pursuant to this subsection shall be valid only for the dates and hours of the sale as indicated on the application submitted to the board and must be prominently displayed at the temporary site at all times during the site sale. No used motor vehicle dealer may purchase more than three temporary site permits within a calendar year. A temporary site permit is not transferable to any other dealer or location.

(5) The fee for each application for a temporary site permit shall be \$100.00.

(c) As an alternative to criminal or other civil enforcement of this Code section or any orders, rules, and regulations promulgated pursuant hereto, the board may issue an administrative fine not to exceed \$1,000.00 for each violation whenever the board, after a hearing, determines that any person has violated any provisions of this Code section or any orders, rules, and regulations promulgated pursuant hereto. If, after a hearing, the board determines that any person has violated this provision more than once, the board may suspend his or her license for a period not to exceed ten days. Any hearing and any administrative review held pursuant to this Code section shall be conducted in accordance with the procedure for contested cases under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Any person who has exhausted all administrative remedies available and who is aggrieved or adversely affected by a final order or action of the board shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50. All fines recovered under this Code section shall be paid into the state treasury. The board may file, in the superior court:

(1) In the county wherein the person under order resides;

(2) If such person is a corporation, in the county wherein the corporation maintains its established place of business; or

(3) In the county wherein the violation occurred,

a certified copy of a final order of the board, whether unappealed from or affirmed upon appeal, whereupon the superior court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and proceedings in relation thereto shall thereafter be the same as though the judgment had been rendered in an action duly heard and determined by the superior court. The penalty prescribed in this Code section shall be concurrent, alternative, and cumulative with any and all other civil, criminal, or alternative rights, remedies, forfeitures, or penalties provided, allowed, or avail-

able to the board with respect to any violation of this Code section or any order, rule, or regulation promulgated pursuant hereto. For purposes of this Code section, the sale of each motor vehicle while not in compliance with temporary site permit requirements shall constitute a separate violation.

(d) Any person who violates any provision of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine not to exceed \$1,000.00 or imprisonment for a period not to exceed 12 months, or both. (Code 1981, § 43-47-8.2, enacted by Ga. L. 1998, p. 1662, § 3; Ga. L. 2005, p. 321, § 6/HB 455.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, in the second sentence of subsection (a), a comma was inserted following “vehicle off site” and “that” was added following “provided”; in paragraph (b)(2), “with the De-

partment of Motor Vehicle Safety” was deleted following “dealer must be registered” in the first sentence and a colon was substituted for a comma at the end of the second sentence.

43-47-9. Contents of licenses; display of licenses; endorsement of change of business location on licenses.

The licenses issued pursuant to this chapter shall specify the location of each place of business or branch or other location occupied or to be occupied by the licensee in conducting his or her business; and the license or supplemental license issued therefor shall be conspicuously displayed on each of such premises. In the event any such location is changed, the appropriate division shall endorse the change of location on the license without charge. (Ga. L. 1958, p. 55, § 10; Ga. L. 1995, p. 441, § 1.)

43-47-10. (For effective date, see note.) Investigation of licensees by board; suspension or revocation of license; other sanctions.

The board or each division may, upon its own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any licensee or anyone who shall assume to act in such capacity. Each division shall have power, in addition to the other powers authorized by this chapter, to revoke or to suspend a license for a specified time, to be determined in its discretion, or to invoke such other lesser sanctions, including but not limited to the imposition of fines and penalty fees, which the board is hereby authorized to create by rule, where:

(1) The licensee is found by a majority of the members of the board to have committed any one or more of the following:

(A) Material misstatement in an application for a license;

(B) Willful and intentional failure to comply with any provisions of this chapter or any lawful rule or regulation issued by the board under this chapter;

(C) Making any substantial misrepresentation;

(D) Making any false promises of a character likely to influence, persuade, or induce;

(E) Pursuing a continued and flagrant course of misrepresentation or the making of false promises through agents, salespersons, advertising, or otherwise;

(F) Failure to account for or to remit any moneys coming into his or her possession which belong to others;

(G) Having demonstrated unworthiness or incompetency to act as a licensee in such manner as to safeguard the interest of the public;

(H) Fraud or fraudulent practice, unfair and deceptive acts or practices, misleading acts or practices, or untrustworthiness or incompetency to act as a licensee, including, but not limited to, the failure to provide the appropriate odometer disclosure forms required by law or knowingly selling or offering for sale any used car on which the odometer has been tampered with to reflect lower than the actual mileage the car has been driven;

(I) The intentional use of any false, fraudulent, or forged statement or document or the use of any fraudulent, deceitful, dishonest, or immoral practice in connection with any of the licensing requirements as provided for in this chapter;

(J) The commission of any crime involving violence, a used motor vehicle, illegal drugs, tax evasion, failure to pay taxes, or any crime involving the illegal use, carrying, or possession of a dangerous weapon; the conviction of, plea of guilty to, or plea of nolo contendere to a crime involving violence, a used motor vehicle, illegal drugs, tax evasion, failure to pay taxes, or any crime involving the illegal use, carrying, or possession of a dangerous weapon shall be conclusive evidence of the commission of such crime;

(K) Use of untruthful or improbable statements or flamboyant or extravagant claims concerning such licensee's excellence or abilities;

(L) The performance of any dishonorable or unethical conduct likely to deceive, defraud, mislead, unfairly treat, or harm the public;

(M) The use of any false or fraudulent statement in any document in connection with the business as a licensee;

(N) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any of the provisions of this chapter, including but not limited to (i) the failure to maintain the certificate of registration required by Code Section 43-47-8 and (ii) the failure to keep records required by this chapter;

(O) Any other conduct, whether of the same or a different character than heretofore specified, which constitutes dishonest dealing;

(P)(i) Any of the following activities by an automobile auction:

(I) Allowing a motor vehicle to be sold through an auction where the seller's name does not appear on the face of the title;

(II) Failing to refund all of the purchase price to the buyer when the title and tag receipt are not assigned to and processed for the buyer within 21 days of the purchase;

(III) Failing to make available to the board, for investigative purposes, auction records of a seller, for the purpose of determining if a seller sold more than five motor vehicles in a calendar year; provided, however, that the board shall give the auction reasonable notice during normal working hours;

(IV) Failing to disclose in a conspicuous manner on the bill of sale that a buyer is entitled to a refund of all of the purchase price when the title and tag receipt are not assigned and processed within 21 days of the purchase;

(V) Failing to include on the bill of sale any warranty disclaimer; or

(VI) Accepting or delivering a certificate of title signed in blank.

(ii) The provisions of this subparagraph shall not apply where:

(I) The sale of the motor vehicle is not open to the general public;

(II) Either the seller or purchaser of the vehicle is a licensed used car dealer;

(III) The motor vehicle is sold as a repossessed or abandoned vehicle; or

(IV) The motor vehicle is sold on behalf of any government agency or by court order.

(iii) A violation of this subparagraph shall also be grounds for suspension or censure of a license under Code Section 43-6-18, and any auction violating this subparagraph may be required by the board to surrender its master tag;

(Q) Acting to obtain or holding a license on behalf of another person who was previously denied a license or had a license suspended or revoked under this chapter; in making determinations under this subparagraph, the division may look at any competent evidence, including, but not limited to, who actually directs the activities at the business and who actually receives the proceeds from the business;

(R) Having purchased, concealed, possessed, or otherwise acquired or disposed of a vehicle, knowing the same to be stolen;

(S) Having failed to meet and maintain the requirements for issuance of a license as provided for in this chapter;

(T) Having failed to pay within 30 days after written demand from the board any fees or penalties due on vehicles acquired for dismantling or rebuilding; or

(U) Having willfully failed to keep or maintain the records required to be kept by this chapter; or

(2) A majority of the members of the division find that the licensee failed to establish, maintain, or monitor procedural safeguards to ensure that the following activities do not occur at the business, regardless of whether the licensee had actual knowledge of any such activity or activities or regardless of whether there was an intent on the part of any person to engage in any such activity or activities:

(A) Unfair and deceptive acts or practices as defined in Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices Act of 1975";

(B) (For effective date, see note.) Any of those activities described in paragraphs (1) through (6) of Code Section 40-3-90; or

(C) Failure to obtain a certificate of title for a purchaser. (Ga. L. 1958, p. 55, § 11; Ga. L. 1960, p. 801, § 3; Ga. L. 1968, p. 23, § 6; Ga. L. 1983, p. 550, § 5; Ga. L. 1988, p. 1504, § 5; Ga. L. 1991, p. 983, § 4; Ga. L. 1995, p. 441, § 1; Ga. L. 1996, p. 1289, § 1; Ga. L. 2011, p. 355, § 20.1/HB 269.)

Delayed effective date. — Subparagraph (2)(B), as set out above, becomes effective January 1, 2012. For version of subparagraph (2)(B) in effect until January 1, 2012, see the 2011 amendment note.

The 2011 amendment, effective January 1, 2012, substituted "paragraphs (1) through (6)" for "paragraphs (1) through (5)" in subparagraph (2)(B).

Cross references. — Penalty for tampering with odometers, § 40-8-5.

JUDICIAL DECISIONS

Security interest holder can file regulatory complaint with board against used car dealer. Wooten v.

G.M.H. Auto Sales, Inc., 187 Ga. App. 331, 370 S.E.2d 165 (1988).

RESEARCH REFERENCES

ALR. — Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 ALR 1388.

Validity of statute or rule which makes

specified conduct or condition a ground for cancellation or suspension of license, irrespective of licensee's personal fault, 3 ALR2d 107.

43-47-11. Hearings before board as to suspension of or revocation of licenses.

Except as provided in subsection (1) of Code Section 43-47-8, no license shall be suspended or revoked without a hearing in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Ga. L. 1958, p. 55, § 12; Ga. L. 1995, p. 441, § 1; Ga. L. 1996, p. 6, § 43.)

43-47-11.1. Registration with commissioner of motor vehicle safety; application for dealer's registration plate.

As provided by law, every licensee who transfers a used motor vehicle title within this state shall register with the state revenue commissioner, making application for a dealer's registration plate. No person not licensed in accordance with this chapter shall be entitled to receive or use any dealer's registration plates for motor vehicles under the motor vehicle laws of this state providing for the issuance of such plates. (Ga. L. 1958, p. 55, § 13; Ga. L. 1968, p. 23, § 9; Code 1981, § 43-47-12; Ga. L. 1983, p. 550, § 6; Code 1981, § 43-47-11.1, as redesignated by Ga. L. 1995, p. 441, § 1; Ga. L. 2002, p. 415, § 43; Ga. L. 2005, p. 334, § 25-6/HB 501.)

Cross references. — Registration of motor vehicle manufacturers and dealers with state revenue commissioner generally, § 40-2-38.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, this Code

section, initially renumbered as Code Section 43-47-11, was renumbered as Code Section 43-47-11.1, owing to the fact that there already was an existing Code Section 43-47-11.

OPINIONS OF THE ATTORNEY GENERAL

Antique used car dealers who must register. — If seller of antique automobiles is a "used car dealer" as defined in Ga. L. 1958, p. 55, § 2 (see O.C.G.A. § 43-47-2), the seller must register and

obtain a license as provided in Ga. L. 1958, p. 55, §§ 3 and 13 (see O.C.G.A. §§ 43-47-7 and 43-47-11.1). 1969 Op. Att'y Gen. No. 69-386.

One denied "dealer tags" for failure

to register not entitled to refund of occupational tax. — Person who has paid the occupational tax as a used car dealer but who is prohibited from receiving and using “dealer tags” because the

person did not register under Ga. L. 1958, p. 55, § 3 or § 13 (see O.C.G.A. § 43-47-7 or O.C.G.A. § 43-47-11.1) is not entitled to a refund of the occupational tax. 1969 Op. Att’y Gen. No. 69-167.

43-47-12. Maintenance of records by licensees; possession of vehicle or parts as evidence of purchase for resale.

(a) Every licensee shall maintain for three years a record of:

(1) Every vehicle, vehicle body, chassis, or major component part of or for a vehicle received or acquired by him or her; its description and any identifying numbers; the date of its receipt or acquisition; and the full name, address, and driver’s license number or social security number of the person from whom received or acquired; provided, however, that, in the event such purchase or acquisition is from a used car dealer or from a used motor vehicle parts dealer, the name and address of the corporation or company shall be sufficient if the seller is registered under this chapter;

(2) Every vehicle, vehicle body, chassis, or major component part disposed of by him or her; its description and any identifying numbers; the date of its receipt or acquisition; and the full name, address, and driver’s license number or social security number of the person to whom disposed; provided, however, that, in the event such disposal is to a used car dealer or to a used motor vehicle parts dealer, the name and address of the corporation or company shall be sufficient if the purchaser or acquirer is registered under this chapter;

(3) Every vehicle wrecked, dismantled, or crushed by him or her and the date of its wrecking or dismantling; and

(4) Any other records which the appropriate division may reasonably require to protect the public, as relating to the licensee’s method of operation and personnel employed.

(b) The possession of motor vehicles or parts covered by this chapter shall be prima-facie evidence that they were purchased for the purpose of resale. (Code 1981, § 43-47-12, enacted by Ga. L. 1995, p. 441, § 1.)

Cross references. — Further provisions regarding maintenance of records by persons purchasing used motor vehicles or parts, § 40-4-40 et seq.

Editor’s notes. — Ga. L. 1995, p. 441, § 1, renumbered former Code Section

43-47-12 as present Code Section 43-47-11. However, owing to the fact that there already was an existing Code Section 43-47-11, former Code Section 43-47-12 was renumbered by the Code Commission as Code Section 43-47-11.1.

43-47-13. Local regulation and licensing.

Nothing in this chapter shall prohibit any lawful regulation or licensing of licensees by any municipality, county, or other political subdivision of this state; provided, however, that no such political subdivision shall license any licensee required to be registered by this chapter unless such licensee is properly licensed under this chapter. (Ga. L. 1958, p. 55, § 15; Ga. L. 1968, p. 23, § 10; Code 1981, § 43-47-14; Ga. L. 1985, p. 975, § 2; Code 1981, § 43-47-13, as redesignated by Ga. L. 1995, p. 441, § 1.)

Editor's notes. — Ga. L. 1995, p. 441, former Code Section 43-47-14 as Code § 1, repealed former Code Section 43-47-13, effective July 1, 1995. 43-47-13, relating to maintenance of records by licensees, and renumbered on Ga. L. 1968, p. 23, § 11.

43-47-14. Fines for violation of chapter.

Each division or the board may impose a fine not to exceed \$500.00 for each violation of any provision of this chapter. Such fines shall be listed in a schedule contained in the rules and regulations of the board. The licensee shall pay the fine within 30 days after receiving written notification from either the appropriate division or a representative of the division unless the licensee requests in writing a hearing before the division. Such request for a hearing must be received by the division within 30 days after receipt of the written notification from the division. Failure either to pay the fine or request a hearing shall result in immediate suspension of the license pending a hearing by the board to determine whether revocation or other disciplinary action should be imposed on the licensee. (Code 1981, § 43-47-14, enacted by Ga. L. 1995, p. 441, § 1.)

Editor's notes. — Ga. L. 1995, p. 441, 43-47-14 as present Code Section § 1, renumbered former Code Section 43-47-13.

43-47-15. Compliance with "Motor Vehicle Certificate of Title Act" required.

Any licensee who purchases a wrecked or salvage motor vehicle or rebuilds a wrecked or salvage motor vehicle shall fully comply with Chapter 3 of Title 40, the "Motor Vehicle Certificate of Title Act," regarding titling and inspection of salvage and rebuilt vehicles, and shall comply with any rules and regulations adopted by the state revenue commissioner pursuant to this chapter. (Code 1981, § 43-47-15, enacted by Ga. L. 1995, p. 441, § 1; Ga. L. 2002, p. 415, § 43; Ga. L. 2005, p. 334, § 25-7/HB 501.)

Editor's notes. — Ga. L. 1995, p. 441, § 1, renumbered former Code Section 43-47-15 as present Code Section 43-47-22.

OPINIONS OF THE ATTORNEY GENERAL

Used motor vehicle parts dealer. — Licensed used motor vehicle parts dealer can transfer salvage titles without being licensed as a used motor vehicle dealer provided that such dealer complies with the Motor Vehicle Certificate of Title Act, O.C.G.A. § 40-3-1 et seq., and rules and regulations of the State Revenue Commissioner relating to salvage vehicles. 1998 Op. Att'y Gen. No. 98-14.

43-47-16. Licensees to furnish certain information to purchasers.

All licensees under this chapter who operate salvage pools shall furnish to any person who purchases a motor vehicle the make, model, year, body style, and vehicle identification number of the particular vehicle sold. In the event that the operator of a salvage pool is an insurance company, the claim number of the vehicle shall be furnished to the purchaser in addition to the other required information. (Code 1981, § 43-47-16, enacted by Ga. L. 1995, p. 441, § 1.)

43-47-17. Consent to inspection as condition of licensure.

Every person required to be licensed under this chapter shall, as a condition of licensure, be deemed to have granted authority and permission to the board, to either division, or to any peace officer to inspect any record or document and any motor vehicle or motor vehicle part or accessory at or on the premises of his or her principal place of business, or any additional place of business, at any reasonable time during the day or night during reasonable business hours. (Code 1981, § 43-47-17, enacted by Ga. L. 1995, p. 441, § 1.)

43-47-18. Impoundment of used vehicles displayed for sale at unlicensed facilities.

Nothing in this chapter shall be construed to prohibit municipalities or counties, by ordinance or resolution, from authorizing local law enforcement officers to impound used motor vehicles which are displayed for sale at unlicensed facilities, provided that such ordinances or resolutions provide for actual prior notice to the owners of such motor vehicles of such impoundment. (Code 1981, § 43-47-18, enacted by Ga. L. 1995, p. 441, § 1; Ga. L. 1996, p. 1289, § 2.)

43-47-19. Sales on consignment basis.

No licensee, except any licensed auto auction or salvage pool selling at its regular place of business, shall sell any used motor vehicle on a

consignment basis unless the licensee places his or her name on the title at the time of sale and complies with all other applicable laws. (Code 1981, § 43-47-19, enacted by Ga. L. 1995, p. 441, § 1.)

43-47-20. Prior rules remain valid.

It is the intent of the General Assembly that all parts of rules properly adopted under this chapter and Chapter 48 of this title prior to July 1, 1995, which do not conflict with this chapter shall be valid until such time as they are repealed, revised, amended, or otherwise changed under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Code 1981, § 43-47-20, enacted by Ga. L. 1995, p. 441, § 1.)

Administrative rules and regulations. — Rules of these professions, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of

Georgia State Board of Registration for Used Motor Vehicle Dismantlers, Rebuilders, and Salvage Dealers, Chapter 685-1 et seq.

43-47-21. Civil penalty; civil actions; right of private action; persons already licensed to make changes at time of renewal of license.

(a) Any person, regardless of whether that person is a licensee or not, who commits or causes to be done any act that violates this chapter or fails to do any act or causes to be omitted any act that is required by this chapter shall be subject to a civil penalty not to exceed \$3,000.00 for each violation. A violation of this chapter shall, for the purposes of this Code section, constitute a separate offense as to any motor vehicle or motor vehicle part; and each day during which any person offers for sale, sells, trades, transfers, or disposes of used motor vehicles or used motor vehicle parts without being licensed pursuant to this chapter shall constitute a separate offense.

(b) The penalty provided in subsection (a) of this Code section and any restitution due to specifically named consumers for violations of this chapter shall be recoverable by a civil action brought by the division, the board, the Attorney General, or any district attorney, solicitor-general, or municipal or county attorney in any superior or state court having proper jurisdiction. The proceeds of any civil penalty shall be remitted to the board by the clerk of the court in which such case is filed; provided, however, that in an action brought on behalf of a county or municipality one-half of the proceeds of such civil penalty shall be paid into the treasury of such county or municipality. The court shall order any restitution recovered on behalf of any consumer to be paid over directly to the consumer by the defendant.

(c) Any person damaged by a violation of this chapter may bring an action against the person committing the violation, regardless of

whether that person is a licensee, in any superior court of competent jurisdiction to recover actual, consequential, and punitive damages, attorneys' fees, and court costs.

(d) Any person who is already licensed under this chapter or its predecessor or under former Chapter 48 of this title who will be required as a result of this chapter to make changes in his or her business operations will not be required to make such changes until such time as he or she is required to renew his or her license. Any such changes shall have been completed prior to the granting of any renewal license. (Code 1981, § 43-47-21, enacted by Ga. L. 1995, p. 441, § 1; Ga. L. 1996, p. 748, § 24.)

Editor's notes. — Ga. L. 1996, p. 748, § 27, not codified by the General Assembly, provides: "Notwithstanding any other provision of law, an Act approved February 11, 1854 (Ga. L. 1854, p. 281), which abolished the office of solicitor of the City Court of Savannah, now the State Court of Chatham County, and transferred responsibility for the prosecution of criminal cases in said court to the solicitor general (now the district attorney) for the Eastern Judicial Circuit is confirmed. It shall be the duty of said district attorney to prosecute all criminal actions in said state court until otherwise specifically provided by law."

Ga. L. 1996, p. 748, § 28, not codified by the General Assembly, provides: "The provisions of this Act shall not affect the powers, duties, or responsibilities of the district attorney as successor to the office of solicitor general under the constitution, statutes, and common law of this state as provided by Code Section 15-18-1."

Ga. L. 1996, p. 748, § 29, not codified by the General Assembly, provides: "Except as otherwise authorized in this Act, on and after July 1, 1996, any reference in general law or in any local Act to the solicitor of a state court shall mean and shall be deemed to mean the solicitor-general of such state court."

Ga. L. 1996, p. 748, § 30, not codified by the General Assembly, provides: "The provisions of paragraph (3) of Code Section 15-18-62, relating to the qualifications for the office of solicitor-general of a state court, shall apply to any person elected or appointed to such office after July 1, 1996. Any person holding such office on July 1, 1996, may continue to hold such office for the remainder of the term to which such person was elected or appointed notwithstanding the fact that such person has not been a member of the State Bar of Georgia for three years if such person is otherwise qualified to hold the office of solicitor-general."

43-47-22. Penalty; injunctions.

Any person, firm, or corporation who violates this chapter shall be guilty of a misdemeanor. In addition to such criminal penalty, the board may bring an action to enjoin any violation, actual or threatened, of this chapter notwithstanding the existence of an adequate remedy at law. (Ga. L. 1958, p. 55, § 14; Code 1981, § 43-47-15; Code 1981, § 43-47-22, as redesignated by Ga. L. 1995, p. 441, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Board may enjoin and prosecute violators. — Board may use, in addition to the board's authority to revoke, suspend, or refuse licenses, the injunctive

remedy provided for in O.C.G.A. § 43-47-22 to enjoin any violation of the provisions of O.C.G.A. Ch. 47, T. 43; violators are also subject to prosecution un-

der the misdemeanor provisions of O.C.G.A. § 43-47-22. 1958-59 Op. Att'y Gen. p. 269.

CHAPTER 48

**USED MOTOR VEHICLE PARTS DEALERS,
DISMANTLERS, AND REBUILDERS AND
SALVAGE DEALERS****43-48-1 through 43-48-21.**

Repealed by Ga. L. 1995, p. 441, § 2, effective July 1, 1995.

Editor's notes. — This chapter was based on Ga. L. 1966, p. 471, §§ 1-20; Ga. L. 1972, p. 177, § 1; Ga. L. 1974, p. 392, §§ 1-3; Ga. L. 1976, p. 1073, § 1; Ga. L. 1981, p. 900, §§ 1-21; Ga. L. 1982, p. 3, § 43; Ga. L. 1983, p. 710, §§ 1-5; Ga. L. 1984, p. 22, § 43; Ga. L. 1984, p. 535, § 1; Ga. L. 1986, p. 465, §§ 1, 2; Ga. L. 1991, p. 94, § 43; Ga. L. 1992, p. 2470, §§ 1-4; Ga. L. 1992, p. 3137, § 37; Ga. L. 1993, p. 123,

§§ 60-62; Ga. L. 1994, p. 97, § 43; Ga. L. 1994, p. 1060, §§ 3, 7.

Former Code Section 43-48-17.1, relating to out-of-state buyers, was repealed by Ga. L. 1986, p. 465, § 2, effective March 31, 1986.

Former Code Section 43-48-21, relating to the termination of this chapter, was repealed by Ga. L. 1992, p. 3137, § 37, effective July 1, 1992.

CHAPTER 49

DEALERS IN USED WATCHES

Sec.		Sec.	
43-49-1.	Purpose of chapter.	43-49-4.	Invoice of sale for secondhand watch; filing of duplicate invoice by vendor; inspection by prosecuting attorney.
43-49-2.	"Secondhand watch" defined.		
43-49-3.	Identifying tags affixed to secondhand watches; advertisements and displays as to secondhand watches.	43-49-5.	Penalty.

Cross references. — Further provisions regarding labeling of remanufactured or rebuilt items, § 10-1-80 et seq. Regulation of pawnbrokers, § 44-12-130 et seq. Jewelers' liens, § 44-14-430 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Regulation or licensing of watchmaking, watch repairing, and the like, 34 ALR2d 1326.

43-49-1. Purpose of chapter.

The purpose of this chapter is to identify all used, rebuilt, or reconditioned watches by requiring them to be marked "secondhand," so as to safeguard the public and prevent the public from being misled when purchasing used, rebuilt, or reconditioned watches and to prevent them from being sold as new watches. (Ga. L. 1945, p. 125, § 1; Ga. L. 1994, p. 97, § 43.)

RESEARCH REFERENCES

Am. Jur. 2d. — 52 Am. Jur. 2d, Markets and Marketing, §§ 8, 19.

43-49-2. "Secondhand watch" defined.

A watch shall be deemed to be secondhand if:

(1) As a whole or the case thereof or the movement thereof it has been previously sold to or acquired by any person who bought or acquired the same for his use or the use of another, but not for resale; provided, however, that a watch which has been so sold or acquired and is thereafter returned, either through exchange or for credit, within 30 days to the original individual, firm, partnership, association, or corporation who sold or passed title to such watch shall not be deemed to be a secondhand watch if such vendor shall keep a written or printed record setting forth the name of the purchaser thereof, the date of the sale or transfer thereof, and the serial number if any, or the case movement and any other distinguishing numbers or identification marks, which record shall be kept for at least two and one-half years from the date of such sale or transfer and shall be open for inspection during all business hours by the appropriate prosecuting attorney of the county in which such vendor is engaged in business, or his duly authorized representative is engaged;

(2) Its case serial numbers or movement numbers or other distinguishing numbers or identification marks shall be erased, defaced, removed, altered, or covered; or

(3) Its movements are more than five years old and it has been repaired by any person or persons, including the vendor, notwithstanding that it may have been returned either through an exchange or for credit to the original vendor. Cleaning and oiling a watch movement or recasing the movement in a new case shall not be deemed a watch repair. (Ga. L. 1945, p. 125, § 5; Ga. L. 1994, p. 97, § 43.)

43-49-3. Identifying tags affixed to secondhand watches; advertisements and displays as to secondhand watches.

(a) Any person, firm, partnership, association, or corporation engaged in the business of buying or selling watches or any agent or servant thereof who may sell or exchange, or offer for sale or exchange, expose for sale or exchange, possess with the intent to sell or exchange, or display with the intent to sell or exchange any secondhand watch shall affix and keep affixed to the same a tag with the word "secondhand" clearly and legibly written or printed thereon; and the said tag shall be so affixed or placed that the word "secondhand" shall be plainly in sight at all times.

(b) Any person, firm, partnership, association, or corporation or any agent or servant thereof who may advertise or display in any manner a secondhand watch for sale or exchange shall state clearly in such advertisement or display that such watch is a secondhand watch. (Ga. L. 1945, p. 125, §§ 2, 4; Ga. L. 1994, p. 97, § 43.)

Cross references. — False or fraudulent advertising, § 10-1-420 et seq.

43-49-4. Invoice of sale for secondhand watch; filing of duplicate invoice by vendor; inspection by prosecuting attorney.

Any person, firm, partnership, association, or corporation engaged in the business of buying or selling watches or any agent or servant thereof who may sell a secondhand watch or in any other way pass title thereto shall deliver to the vendee a written invoice bearing the word "secondhand" in bold letters, larger than any of the other written matter upon said invoice. The invoice shall further set forth the name and address of the vendor, the name and address of the vendee, the date of the sale, the name of the watch or its maker, the serial number, if any, and any other distinguishing numbers or identification marks upon its case and movement. If the serial numbers or other distinguishing numbers or identification marks shall have been erased, defaced, removed, altered, or covered, the invoice shall so state. The vendor shall keep on file a duplicate of the invoice for at least two and one-half years from the sale thereof, which invoice shall be open to inspection during all business hours by the appropriate prosecuting attorney of the county in which the vendor is engaged in business or in which his duly authorized representative is engaged. (Ga. L. 1945, p. 125, § 3; Ga. L. 1994, p. 97, § 43.)

43-49-5. Penalty.

Any person, firm, partnership, association, or corporation or any agent or servant thereof who violates this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$500.00 or by imprisonment not to exceed 100 days, or both. (Ga. L. 1945, p. 125, § 6.)

CHAPTER 50

VETERINARIANS AND VETERINARY TECHNICIANS

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 43-50-2. Legislative purpose.
 43-50-3. Definitions.
 43-50-4. Termination [Repealed].

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 43-50-43. Veterinary faculty licenses.
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 43-50-51. Practice of veterinary technol-
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 43-50-52. Application for registration as
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 43-50-54. Supervision required; prohib-
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 tification; limitation on num-
 ber of technicians supervised
 and employed; exception.
 43-50-56. Veterinarian responsible for
 veterinary technician's viola-
 tions of limitations on duties.
 43-50-57. Termination or suspension of
 approval of use of veterinary
 technician; revocation or sus-
 pension of technician's regis-
 tration certificate [Repealed].
 43-50-58. Revocation or suspension of
 board's approval of use of reg-
 istered animal technician; re-
 vocation or suspension of tech-
 nician's registration certificate
 [Repealed].
 43-50-59. Powers of board under article
 generally [Repealed].

Article 3A

Veterinary Assistants

- 43-50-60. Purpose.

- Sec.
 43-50-61. Practice of veterinary technology by a veterinary assistant.
 43-50-62. Supervision required; prohibited uses of veterinary assistant.
 43-50-63. Posting notice of use of veterinary assistant; proper identification required.
 43-50-64. Veterinarian ultimately responsible for violations of veterinary assistant.
 43-50-70 and 43-50-71. Redesignated.

Article 4

Good Samaritan Treatment of Animals

- 43-50-80. Good faith emergency treat-

- Sec.
 ment to sick or injured animals; no liability.

Article 5

Facilities and Equipment

- 43-50-90. (For effective date, see note.) Establishing standards for facilities and equipment; monitoring, investigation, and enforcement actions.
 43-50-91. (For effective date, see note.) Facilities accredited by American Zoo and Aquarium Association or equivalent agency exempt.

Cross references. — Professional corporations generally, T. 14, C. 7. Cancelable loan fund for doctors of veterinary medicine, § 20-3-374.

Editor's notes. — This chapter formerly contained a Code Section 43-50-58 which was based on Ga. L. 1973, p. 260, § 6; and was repealed by Ga. L. 1983, p. 705, § 1, effective July 1, 1983.

This chapter formerly contained a Code Section 43-50-59 which was based on Ga. L. 1973, p. 260, § 6; and was repealed by Ga. L. 1983, p. 705, § 1, effective July 1, 1983.

This chapter formerly contained a Code Section 43-50-4 which was based on Ga. L. 1982, p. 1065, §§ 1 and 2; and Ga. L. 1988, p. 1589, § 1; and was repealed by Ga. L. 1992, p. 3137, § 38, effective July 1, 1992.

This chapter formerly contained a Code Section 43-50-28 which was based on Ga. L. 1965, p. 92, § 1; Ga. L. 1973, p. 260, § 5; and was repealed by Ga. L. 1988, p. 1589, § 5, effective July 1, 1988.

Administrative rules and regulations. — Organization, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Veterinary Medicine, Chapter 700-1.

Law reviews. — For note, "Notice Requirements and the Entrapment Defense Under the Georgia Administrative Procedure Act in Light of Schaffer v. State Bd. of Veterinary Medicine," 143 Ga. App. 68, 237 S.E.2d 510 (1977), see 30 Mercer L. Rev. 347 (1978).

JUDICIAL DECISIONS

Provisions for review by administrative agency preclude equitable remedy. — When a statute provides a party with a means of review by an administrative agency, such procedure is

generally an adequate remedy at law so as to preclude the grant of equitable relief. Brogdon v. State Bd. of Veterinary Medicine, 244 Ga. 780, 262 S.E.2d 56 (1979).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A

Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 39 Am. Jur. 2d, Health, §§ 1 et seq., 26 et seq. 51 Am. Jur.

2d, Licenses and Permits, § 1 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

Am. Jur. Proof of Facts. — Veterinary Malpractice, 32 POF3d 351.

Actions Involving Injuries to Animals, 90 POF3d 1.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 39A C.J.S., Health and Environment, §§ 3 et seq., 37 et seq., 48 et seq. 53 C.J.S., Licenses, § 6 et seq.

67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

ALR. — Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

Validity, construction and effect of statutes or regulations relating to practice of veterinary medicine, 50 ALR2d 870; 8 ALR4th 223.

Veterinarian's liability for malpractice, 71 ALR4th 811.

ARTICLE 1

GENERAL PROVISIONS

43-50-1. Short title.

This chapter shall be known and may be cited as the "Georgia Veterinary Practice Act." (Code 1933, § 84-1501, enacted by Ga. L. 1965, p. 92, § 1; Ga. L. 1999, p. 81, § 43; Ga. L. 2003, p. 615, § 1-1.)

JUDICIAL DECISIONS

Cited in *Schaffer v. State Bd. of Veterinary Medicine*, 143 Ga. App. 58, 237 S.E.2d 510 (1977).

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, Veterinarians, § 2 et seq.

Am. Jur. Pleading and Practice Forms. — 24B Am. Jur. Pleading and Practice Forms, Veterinarians, § 1.

C.J.S. — 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers, § 1 et seq.

43-50-2. Legislative purpose.

This chapter is enacted as an exercise of the powers of the state to promote the public health, safety, and welfare by safeguarding the people of this state against incompetent, dishonest, or unprincipled practitioners of veterinary medicine or veterinary technology. (Ga. L. 1965, p. 92, § 1; Ga. L. 2003, p. 615, § 1-1.)

43-50-3. Definitions.

As used in this chapter, the term:

(1) “Accredited college or school of veterinary medicine” means any veterinary college or school or division of a university or college that offers the degree of Doctor of Veterinary Medicine or its equivalent and that conforms to the standards required for accreditation by the American Veterinary Medical Association Council on Education or its successor organization.

(2) “Animal” means any animal other than man and includes fowl, birds, fish, and reptiles, wild or domestic, living or dead.

(3) “AVMA accredited program in veterinary technology” means any postsecondary educational program of two or more academic years that has fulfilled the essential criteria established by the Committee on Veterinary Technician Education and Activities and approved by the American Veterinary Medical Association or its successor organization.

(4) “Board” means the State Board of Veterinary Medicine.

(5) “Direct supervision” means that the licensed veterinarian is on the premises and is quickly and easily available and that the animal patient has been examined by a licensed veterinarian at such time as acceptable veterinary medical practice requires, consistent with the particular delegated animal health care task.

(6) “ECFVG certificate or its substantial equivalent” means a certificate issued by the American Veterinary Medical Association Educational Commission for Foreign Veterinary Graduates or its successor organization indicating the holder has demonstrated knowledge and skill equivalent to that possessed by a graduate of an accredited college of veterinary medicine.

(7) “Immediate supervision” means the licensed veterinarian is in audible and visual range of the animal patient and the person treating the animal.

(8) “Indirect supervision” means the licensed veterinarian is not on the premises but has given either written or oral instructions for the treatment of the animal patient and the animal has been examined by a licensed veterinarian at such times as acceptable veterinary medical practice requires, consistent with the particular delegated health care task.

(9) “Licensed veterinarian” means a person who is validly and currently licensed to practice veterinary medicine in this state.

(10) “Person” means any individual, firm, partnership, limited liability company, association, joint venture, cooperative, and corpo-

ration or any other group or combination acting in concert; and whether or not acting as a principal, trustee, fiduciary, receiver, or as any other kind of legal or personal representative, or as the successor in interest, assignee, agent, factor, servant, employee, member, director, officer, or any other representative of such person.

(11) "Practice veterinary medicine" or "practice of veterinary medicine" means:

(A) To diagnose, treat, correct, change, relieve, or prevent animal disease, deformity, defect, injury, or other physical or mental conditions, including the prescription, administration, or dispensing of any prescription drug, medicine, biologic, apparatus, application, anesthetic, or other therapeutic or diagnostic substance or technique on, for, or to any animal, including but not limited to acupuncture, animal dentistry, manual or mechanical adjustment procedures, physical therapy, surgery, diagnostic veterinary pathology, any manual, mechanical, biological, or chemical procedure used for pregnancy testing or for correcting sterility or infertility, or to render advice or recommendations with regard to any of the above; but not including such administration or dispensing pursuant to prescription or direction of a licensed veterinarian;

(B)(i) To apply or use any instrument or device on any portion of an animal's tooth, gum, or any related tissue for the prevention, cure, or relief of any wound, fracture, injury, disease, or other condition of an animal's tooth, gum, or related tissue.

(ii) To engage in preventive dental procedures on animals including, but not limited to, the removal of calculus, soft deposits, plaque, or stains or the smoothing, filing, or polishing of tooth surfaces.

(iii) Nothing in this subparagraph shall prohibit any person from utilizing cotton swabs, gauze, dental floss, dentifrice, toothbrushes, or similar items to clean an animal's teeth;

(C) To represent, directly or indirectly, publicly or privately, an ability and willingness to do any act described in subparagraphs (A) and (B) of this paragraph;

(D) To use any title, words, abbreviation, or letters in a manner or under circumstances which induce the belief that the person using them is legally authorized or qualified to perform an act included in this paragraph. Such use shall be evidence of the intention to represent oneself as engaged in the practice of veterinary medicine;

(E) To apply principles of environmental sanitation, food inspection, environmental pollution control, zoonotic disease control, and

disaster medicine in the promotion and protection of public health as it specifically relates to animals. This subparagraph shall apply only to licensed veterinarians and not to other qualified individuals;

(F) To collect blood or other samples for the purpose of diagnosing diseases or related conditions. This subparagraph shall not apply to unlicensed professionals employed by or under contract with the United States Department of Agriculture or the Georgia Department of Agriculture who are engaged in their official duties; or

(G) To administer a rabies vaccination to any animal that the state requires to be vaccinated.

(12) "Prescription drug" includes any medicine, medication, or pharmaceutical or biological product whose manufacturer's label must, pursuant to federal or state law, have the following statement printed on its packaging: "Federal law restricts this drug to use by or on the order of a licensed veterinarian"; or any over-the-counter product that is used in a manner different from the label directions and that by definition requires a valid veterinarian-client-patient relationship for prescription or dispensing.

(13) Reserved.

(14) "Veterinarian" means a person who has received a doctorate degree in veterinary medicine from a college or school of veterinary medicine.

(15) "Veterinarian-client-patient relationship" means that:

(A) The licensed veterinarian or his or her licensed designee has assumed the responsibility for making medical judgments regarding the health of the animal and the need for medical treatment, and the client (owner or caretaker) has agreed to follow the instruction of the licensed veterinarian;

(B) There is sufficient knowledge of the animal by the licensed veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal. This means that the licensed veterinarian has recently seen and is personally acquainted with the keeping and care of the animal by the virtue of examination of the animal or by medically appropriate and timely visits to the premises where the animal is kept; and

(C) A licensed veterinarian is readily available for follow up in the case of adverse reactions or failure of the regimen of therapy.

(15.1) "Veterinary assistant" means a person who engages in certain aspects of the practice of veterinary technology but is not registered by the board for such purpose.

(16) "Veterinary facility" means any premises owned or operated by a veterinarian or his or her employer where the practice of veterinary medicine occurs, including but not limited to veterinary hospitals, clinics, or mobile clinics; provided, however, that such term does not include a client's private property where a licensed veterinarian treats the client's animals.

(17) "Veterinary medicine" includes veterinary surgery, obstetrics, dentistry, and all other branches or specialties of veterinary medicine.

(18) "Veterinary technician" means a person who engages in the practice of veterinary technology and on the basis of his or her qualifications is validly and currently registered by the board for such purpose.

(19) "Veterinary technology" means the science and art of providing certain aspects of professional medical care and treatment for animals and the practice of veterinary medicine as may be delegated and supervised by a licensed veterinarian and performed by a person who is not a licensed veterinarian. (Ga. L. 1908, p. 88, § 6; Civil Code 1910, § 2062; Code 1933, § 84-1501; Ga. L. 1962, p. 543, § 1; Code 1933, § 84-1502, enacted by Ga. L. 1965, p. 92, § 1; Ga. L. 1991, p. 375, § 1; Ga. L. 1992, p. 6, § 43; Ga. L. 1993, p. 123, § 63; Ga. L. 2003, p. 615, § 1-1; Ga. L. 2006, p. 30, § 1/HB 999.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, commas were inserted following "gum" at the end of division (5)(B)(i) (now division

(11)(B)(i)) and following "toothbrushes" in division (5)(B)(iii) (now division (11)(B)(iii)).

JUDICIAL DECISIONS

What constitutes practice of veterinary medicine. — This section contained separate and distinct definitions of what constituted practice of veterinary medicine. Language, grammatical structure, and substantive content of that statute require the conclusion that it constituted the practice of veterinary medicine to do any act described in that statute, or to

represent an ability and willingness to do any act described in the statute, or to use any title which induced a belief that the person using the title was qualified to do any act described in the statute. *Brown v. Georgia State Bd. of Veterinary Medicine*, 134 Ga. App. 574, 215 S.E.2d 332 (1975) (decided prior to 1991 amendment; see O.C.G.A. § 43-50-3).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 84-1501, as it read prior to revision of chapter by Ga. L. 1965, p. 92, are included in the annotations for this Code section.

Embryo transfer process constitutes the practice of veterinary medicine under O.C.G.A. § 43-50-3. 1984 Op. Att'y Gen. No. 84-86.

County agent may advise farmers about what might be wrong with the

farmers' livestock. 1962 Op. Att'y Gen. p. 393.

County agent teaching farmers how to treat livestock is not practicing veterinary medicine. 1962 Op. Att'y Gen. p. 393.

Checking whether animal is pregnant not practicing veterinary medicine. — Examination to discover whether or not an animal is pregnant is not practicing veterinary medicine for reason that pregnancy is not considered a disease; the intention of the law is to prohibit laymen from practicing veterinary medicine as defined. 1962 Op. Att'y Gen. p. 393.

Use of ultrasound to diagnose pregnancy constitutes the practice of veterinary medicine under O.C.G.A. § 43-50-3. 1996 Op. Att'y Gen. No. 96-26.

Castrating, dehorning, and hoof trimming do not constitute practice of veterinary medicine. 1962 Op. Att'y Gen. p. 393.

Implanting microchips not "practice of veterinary medicine." — Implantation of microchips in animals solely for identification purposes does not constitute the "practice of veterinary medicine", which may be performed only by a licensed veterinarian. 1995 Op. Att'y Gen. No. 95-3.

Deworming and treatment of foot rot might be considered practicing veterinary medicine. 1962 Op. Att'y Gen. p. 393.

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, Veterinarians, §§ 1, 3.

43-50-4. Termination.

Repealed by Ga. L. 1992, p. 3137, § 38, effective July 1, 1992.

Editor's notes. — This Code section was based on Ga. L. 1982, p. 1065, §§ 1 and 2; and Ga. L. 1988, p. 1589, § 1.

ARTICLE 2

STATE BOARD OF VETERINARY MEDICINE

Cross references. — Educational loans to veterinary students, § 20-3-374. Veterinarians' privilege, § 24-9-29. Liens

of veterinarians for treatment, board, or care of animals, § 44-14-490 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 39 Am. Jur. 2d, Health, §§ 1 et seq., 26 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S.,

Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 39A C.J.S., Health and Environment, §§ 3 et seq., 37 et seq., 48 et seq. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative Law and

Procedure, § 115 et seq. 81A C.J.S., States, §§ 79 et seq., 120 et seq. 82 C.J.S., Statutes, §§ 203, 281.

practice of veterinary medicine, 8 ALR4th 223.

ALR. — Validity, construction, and effect of statutes or regulations governing

Veterinarian's liability for malpractice, 71 ALR4th 811.

43-50-20. (For effective date, see note.) Creation of board; members; qualifications; vacancies; expenses; meetings; officers.

(a) There shall be a State Board of Veterinary Medicine, the members of which shall be appointed by the Governor with the approval of the Secretary of State and confirmation by the Senate. The board shall consist of six members, each appointed for a term of five years or until his or her successor is appointed. Five members of the board shall be duly licensed veterinarians actually engaged in active practice for at least five years prior to appointment. The sixth member shall be appointed from the public at large and shall in no way be connected with the practice of veterinary medicine. Those members of the State Board of Veterinary Medicine serving on July 1, 2003, shall continue to serve as members of the board until the expiration of the term for which they were appointed. Thereafter, successors to such board members shall be appointed in accordance with this Code section.

(b) Vacancies due to death, resignation, removal, or otherwise shall be filled for the remainder of the unexpired term in the same manner as regular appointments. No person shall serve two consecutive five-year terms, but a person appointed for a term of less than five years may succeed himself or herself.

(c) No person may serve on the board who is, or was during the two years preceding his or her appointment, a member of the faculty, trustees, or advisory board of a veterinary school.

(d) Each member of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.

(e) Any member of the board may be removed by the Governor after a hearing by the board determines cause for removal.

(f) The board shall meet at least once each year at the time fixed by the board. Other necessary meetings may be called by the president of the board by giving such notice as shall be established by the board. Meetings shall be open and public except that the board may meet in closed session to prepare, approve, administer, or grade examinations or to deliberate the qualifications of an applicant for license or the disposition of a proceeding to discipline a licensed veterinarian.

(g) At its annual meeting, the board shall organize by electing a president and such other officers as may be required by the board.

Officers of the board serve for terms of one year and until a successor is elected, without limitation on the number of terms an officer may serve. The president shall chair the board meetings. (Ga. L. 1908, p. 88, §§ 1, 2; Civil Code 1910, §§ 2057, 2058; Code 1933, §§ 84-1502, 84-1503; Code 1933, § 84-1504, enacted by Ga. L. 1965, p. 92, § 1; Ga. L. 1974, p. 1441, § 1; Code 1933, § 84-1504.1, enacted by Ga. L. 1980, p. 64, § 1; Ga. L. 2003, p. 615, §§ 1-1, 2-1.)

Delayed effective date. — Ga. L. 2003, p. 615, § 3-1, provides that the 2003 amendment by § 2-1 of that Act becomes effective only upon the effective date of an appropriation of funds for the specific purposes of Part II of that Act as expressed in a line item making specific reference to full funding of the Act in an Appropriations Act enacted by the General Assembly. Funds were not appropriated at the 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, or 2011 session of the General Assembly. This Code section, as set out above, does not reflect the amendment by § 2-1 of that Act, owing to the delayed effective date.

The 2003 amendments. — The 2003 amendment by § 1-1 of Ga. L. 2003, p. 615, effective July 1, 2003, in subsection (a), in the first sentence, substituted "There shall be a" for "The", deleted "is created" following "Medicine", and substituted "confirmation" for "confirmed", inserted "or her" in the second sentence, deleted the former fifth sentence which read: "The initial appointment for the sixth member shall expire June 30, 1985; thereafter, successors shall be appointed for a term of five years.", and, in the present fifth sentence, substituted "State Board of Veterinary Medicine" for "Georgia State Board of Veterinary Examiners" and substituted "July 1, 2003" for "July 1, 1965"; added "or herself" in the last sentence of subsection (b); inserted "or her" in subsection (c); and substituted "chair the" for "serve as chairman of" in the last sentence of subsection (g). The 2003 amendment by § 2-1 of Ga. L. 2003, p. 615, in subsection (a), in the first sen-

tence, substituted "There shall be a" for "The", deleted "is created" following "Medicine", and substituted "confirmation" for "confirmed", in the second sentence, substituted "seven members" for "six members" and inserted "or her", substituted "The seventh member shall be a registered veterinary technician who has been registered and actively engaged in the practice of veterinary technology for at least five years prior to appointment. The initial appointment of the veterinary technician shall expire on June 30 in the fifth calendar year after this subsection becomes effective; thereafter, successors shall be appointed for a term of five years." for "The initial appointment for the sixth member shall expire June 30, 1985; thereafter, successors shall be appointed for a term of five years.", and, in the next to the last sentence, substituted "State Board of Veterinary Medicine" for "Georgia State Board of Veterinary Examiners" and substituted "the effective date of this subsection" for "July 1, 1965". For effective date of 2003 amendment, see the delayed effective date note.

Cross references. — Opening meetings of public agencies to members of public generally, T. 50, C. 14.

Law reviews. — For comment on *Rogers v. Medical Ass'n*, 244 Ga. 151, 259 S.E.2d 85 (1979), invalidating Georgia statute requiring Governor's appointments to Composite State Board of Medical Examiners be made solely from nominees submitted by state medical society as an unconstitutional delegation of legislative authority to a private organization, see 29 Emory L.J. 1183 (1980).

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, Veterinarians, § 2 et seq.

C.J.S. — 70 C.J.S., Physicians, Surgeons, and Other Health Care Providers, § 1 et seq.

ALR. — Disqualification, for bias or interest, of member of occupation or profession sitting in license revocation proceeding, 97 ALR2d 1210.

43-50-21. General powers of board; liberal construction of powers.

(a) The board shall have the power to:

(1) Examine and determine the qualifications and fitness of applicants for licenses or registrations to practice veterinary medicine and veterinary technology in this state;

(2) Issue, renew, refuse to renew, deny, suspend, or revoke licenses or registrations to practice veterinary medicine or veterinary technology in this state or otherwise discipline licensed veterinarians and registered veterinary technicians; and to issue, renew, deny, suspend, or revoke veterinary faculty licenses, consistent with this chapter and the rules and regulations adopted under this chapter;

(3) Conduct investigations for the purpose of discovering violations of this chapter or grounds for disciplining persons licensed or registered under this chapter;

(4) Hold hearings on all matters properly brought before the board; and, in connection therewith, to administer oaths, receive evidence, make the necessary determinations, and enter orders consistent with the findings. The board may designate one or more of its members to serve as its hearing officer;

(5) Appoint from its own membership one member to act as a representative of the board at any meeting within or outside the state where such representative is deemed desirable;

(6) Bring proceedings in the courts for the enforcement of this chapter or any regulations made pursuant to this chapter; and

(7) Adopt, amend, or repeal all rules necessary for its government and all regulations necessary to carry this chapter into effect, including without limitation the establishment and print or electronic publication of standards of professional conduct for the practice of veterinary medicine and veterinary technology.

(b) The powers enumerated in subsection (a) of this Code section are granted for the purpose of enabling the board to supervise effectively the practice of veterinary medicine and veterinary technology and are to be construed liberally to accomplish this objective. (Ga. L. 1908, p. 88,

§ 2; Code 1933, §§ 84-1503, 84-1504; Code 1933, § 84-1504, enacted by Ga. L. 1965, p. 92, § 1; Ga. L. 1973, p. 260, § 2; Ga. L. 1974, p. 1441, § 2; Ga. L. 1982, p. 1065, § 3; Ga. L. 1994, p. 97, § 43; Ga. L. 2003, p. 615, § 1-1; Ga. L. 2010, p. 838, § 11/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted “print or electronic” in paragraph (a)(7).
Administrative rules and regulations. — Rules of the profession, Official

Compilation of the Rules and Regulations of the State of Georgia, Rules of State Board of Veterinary Medicine, Chapter 700-1 et seq.

JUDICIAL DECISIONS

Cited in Brown v. Georgia State Bd. of Veterinary Medicine, 134 Ga. App. 574, 215 S.E.2d 332 (1975).

RESEARCH REFERENCES

ALR. — Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.
Disqualification, for bias or interest, of member of occupation or profession sitting

in license revocation proceeding, 97 ALR2d 1210.
Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

ARTICLE 3

LICENSING AND REGISTRATION

PART 1

VETERINARIANS

Editor’s notes. — Ga. L. 2003, p. 615, § 1-1, effective July 1, 2003, redesignated the Code sections formerly codified as Code Sections 43-50-22 through 43-50-25 as present Part 1 of Article 3 consisting of Code Sections 43-50-30 through 43-50-33.

43-50-30. License requirement for practice of veterinary medicine; practice by business employee.

- (a) No person may practice veterinary medicine in this state who is not a licensed veterinarian or the holder of a valid temporary license issued by the division director pursuant to this article.
- (b) A licensed veterinarian may practice veterinary medicine as an employee of a corporation, partnership, or other business organization provided the articles of incorporation, partnership, or business organization documents clearly state that the licensed veterinarian is not subject to the direction of anyone not licensed to practice veterinary medicine in Georgia in making veterinary medical decisions or judg-

ments. (Code 1933, § 84-1503, enacted by Ga. L. 1965, p. 92, § 1; Ga. L. 1973, p. 260, § 1; Code 1981, § 43-50-22; Ga. L. 2000, p. 1706, § 19; Code 1981, § 43-50-30, as redesignated by Ga. L. 2003, p. 615, § 1-1.)

JUDICIAL DECISIONS

Cited in *Brown v. Georgia State Bd. of Veterinary Medicine*, 134 Ga. App. 574, 215 S.E.2d 332 (1975).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 84-1501, as it read prior to revision of the chapter by Ga. L. 1965, p. 92, are included in the annotations for this Code section.

Embryo transfer process constitutes the practice of veterinary medicine under O.C.G.A. § 43-50-3. 1984 Op. Att'y Gen. No. 84-86.

It is not unlawful for a county agent to advise farmers about what might be wrong with the farmers' livestock. 1962 Op. Att'y Gen. p. 393 (decided under former Code 1933, § 84-1501).

County agent teaching farmers how to treat livestock is not practicing veterinary medicine. 1962 Op. Att'y Gen. p. 393 (decided under former Code 1933, § 84-1501).

Examination to discover whether

or not an animal is pregnant is not practicing veterinary medicine as defined in former Code 1933, §§ 84-1502 (see O.C.G.A. § 43-50-3) and 84-1503 (see O.C.G.A. §§ 43-50-21 and 43-50-22) for the reason that pregnancy is not considered a disease; the intention of the law is to prohibit laymen from practicing veterinary medicine as defined. 1962 Op. Att'y Gen. p. 393 (decided under former Code 1933, § 84-1501).

Castrating, dehorning, and hoof trimming do not constitute the practice of veterinary medicine. 1962 Op. Att'y Gen. p. 393 (decided under former Code 1933, § 84-1501).

Deworming and treatment of foot rot might be considered practicing veterinary medicine. 1962 Op. Att'y Gen. p. 393 (decided under former Code 1933, § 84-1501).

RESEARCH REFERENCES

ALR. — Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

Medical malpractice: who are "health care providers," or the like, whose actions fall within statutes specifically governing actions and damages for medical malpractice, 12 ALR5th 1.

43-50-31. Application for license; qualifications; determination as to admission or nonadmission to examination; waiver.

(a) Any person desiring a license to practice veterinary medicine in this state shall make application to the board. The application shall include evidence, satisfactory to the board, that:

(1) The applicant has attained the age of 18;

(2) The applicant is of good moral character;

(3) The applicant is a graduate of an accredited college or school of veterinary medicine or possesses an ECFVG certificate or its substantial equivalent; provided, however, that a senior veterinary student may, in the discretion of the board, be allowed to sit for the examination during his or her senior year if he or she meets the other qualifications but shall not be issued a license unless and until he or she graduates; and

(4) The applicant meets such other qualifications or provides such other information as the board may require by rule.

(b) The application shall be accompanied by a fee in the amount established by the board.

(c) If the board determines that an applicant possesses the proper qualifications, it shall admit the applicant to the next examination; provided, however, that the board may provide by rule for waiver of any part of such examination for veterinarians who are licensed as such by another state and who are in good standing therewith. (Ga. L. 1908, p. 88, §§ 3, 4; Civil Code 1910, §§ 2059, 2060; Code 1933, §§ 84-1504, 84-1505; Ga. L. 1950, p. 254, § 1; Ga. L. 1962, p. 543, §§ 2, 3; Code 1933, § 84-1506, enacted by Ga. L. 1965, p. 92, § 1; Code 1981, § 43-50-23; Ga. L. 1982, p. 1065, § 4; Ga. L. 1988, p. 1589, § 2; Code 1981, § 43-50-31 as redesignated by Ga. L. 2003, p. 615, § 1-1; Ga. L. 2010, p. 266, § 45/SB 195.)

The 2010 amendment, effective May 20, 2010, deleted “written” preceding “application” near the end of the first sentence of subsection (a).

Editor’s notes. — Former Code Section 43-50-31 (Ga. L. 1965, p. 92, § 1), relating to the applicability of Chapter 13 of Title 50, was repealed by Ga. L. 1988, p. 1589, § 7, effective July 1, 1988.

Administrative rules and regulations. — Qualifications for admission to examination, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Veterinary Medicine, Chapter 700-2.

43-50-32. Frequency of examinations; notification to applicants of results; admission for reexamination.

(a) The board shall hold at least one license examination during each year and may hold such additional license examinations as are necessary.

(b) After each examination, the division director shall notify each examinee of the result of his or her examination, and the board shall issue licenses to the persons successfully completing the examination. The division director shall record the new licenses and issue a certifi-

cate of registration to the new licensees. If an applicant fails a license examination, the applicant may take a subsequent examination upon payment of the registration and examination fees. No person may take the examination more than three times without review and approval by the board. Approval may be provided under such circumstances as the board deems appropriate. (Ga. L. 1908, p. 88, §§ 3, 4; Civil Code 1910, §§ 2059, 2060; Code 1933, §§ 84-1504, 84-1506; Ga. L. 1950, p. 254, § 1; Ga. L. 1962, p. 543, §§ 2, 4; Code 1933, § 84-1507, enacted by Ga. L. 1965, p. 92, § 1; Code 1981, § 43-50-24; Ga. L. 2000, p. 1706, § 19; Code 1981, § 43-50-32, as redesignated by Ga. L. 2003, p. 615, § 1-1.)

43-50-33. Application of article to persons licensed on July 1, 2003.

Any person holding a valid license to practice veterinary medicine in this state on July 1, 2003, shall be recognized as a licensed veterinarian and shall be entitled to retain this status so long as he or she complies with this article, including biennial renewal of the license. (Code 1933, § 84-1505, enacted by Ga. L. 1965, p. 92, § 1; Code 1981, § 43-50-25; Code 1981, § 43-50-33, as redesignated by Ga. L. 2003, p. 615, § 1-1.)

RESEARCH REFERENCES

ALR. — Construction of “grandfather or licensing business or occupation, 4 clause” of statute or ordinance regulating ALR2d 667.

PART 2

LICENSING AND REGISTRATION GENERALLY

Editor’s notes. — Ga. L. 2003, p. 615, § 1-1, effective July 1, 2003, redesignated the Code sections formerly codified as Code Sections 43-50-26 through 43-50-33 as present Part 2 of Article 3 consisting of Code Sections 43-50-40 through 43-50-45. However, former Code Sections 43-50-28 and 43-50-31 were not reenacted by Ga. L. 2003, p. 615, § 1-1.

43-50-40. (For effective date, see note.) Renewal of licenses and registrations; reinstatement; waiver of fee; continuing education; inactive status.

(a) All licenses and registrations under this article shall be renewable biennially.

(b) Any person who shall practice veterinary medicine or veterinary technology after the expiration of his or her license or registration and willfully or by neglect fail to renew such license or registration shall be practicing in violation of this article, provided that any person may renew an expired license or registration within the period established by the division director in accordance with Code Section 43-1-4 by

making application for renewal and paying the applicable fees. After the time period established by the division director has elapsed, such license or registration may be reinstated in accordance with the rules of the board.

(c) The board may by rule waive the payment of the renewal fee of a licensed veterinarian or registered veterinary technician during the period when he or she is on active duty with any branch of the armed forces of the United States, not to exceed the longer of three years or the duration of a national emergency.

(d)(1) The board shall establish a program of continuing professional veterinary medical education for the renewal of veterinary licenses. Notwithstanding any other provision of this article, no license to practice veterinary medicine shall be renewed by the board or the division director until the licensed veterinarian submits to the board satisfactory proof of his or her participation, during the biennium preceding his or her application for renewal, in approved programs of continuing education, as defined in this Code section. The amount of continuing veterinary medical education required of licensed veterinarians by the board under this paragraph shall not be less than 30 hours and shall be established by board rule.

(2) Continuing professional veterinary medical education shall consist of educational programs providing training pertinent to the practice of veterinary medicine and approved by the board under this Code section. The board may approve educational programs for persons practicing veterinary medicine in this state on a reasonable nondiscriminatory fee basis and may contract with institutions of higher learning, professional organizations, or qualified individuals for the provision of approved programs. In addition to such programs, the board may allow the continuing education requirement to be fulfilled by the completion of approved distance learning courses, with the number of hours being established by board rule.

(3) The board may, consistent with the requirements of this Code section, promulgate rules and regulations to implement and administer this Code section, including the establishment of a committee to prescribe standards, approve and contract for educational programs, and set the required minimum number of hours per year.

(e) The board shall provide by regulation for an inactive status license or registration for those individuals who elect to apply for such status. Persons who are granted inactive status shall not engage in the practice of veterinary medicine or veterinary technology and shall be exempt from the requirements of continuing veterinary medical education during such inactivity. (Code 1933, § 84-1508, enacted by Ga. L. 1965, p. 92, § 1; Ga. L. 1973, p. 260, § 3; Code 1981, § 43-50-26; Ga. L.

1985, p. 406, § 1; Ga. L. 1988, p. 1589, § 3; Ga. L. 2000, p. 1706, § 19; Code 1981, § 43-50-40, as redesignated by Ga. L. 2003, p. 615, §§ 1-1, 2-2; Ga. L. 2008, p. 1112, § 20/HB 1055; Ga. L. 2010, p. 266, § 46/SB 195.)

Delayed effective date. — Ga. L. 2003, p. 615, § 3-1, provides that the 2003 amendment by § 2-2 of that Act becomes effective only upon the effective date of an appropriation of funds for purposes of Part II of that Act as expressed in a line item making specific reference to full funding of that Act in an Appropriations Act enacted by the General Assembly. This Code section, as set out above, does not reflect the amendment by § 2-2 of that Act, owing to the delayed effective date. Funds were not appropriated at the 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, or 2011 session of the General Assembly.

The 2003 amendments. — The 2003 amendment by § 1-1 of Ga. L. 2003, p. 615, effective July 1, 2003, redesignated former Code Section 43-50-26 as present Code Section 43-50-40; throughout this Code section, inserted “or veterinary technology” and “or registration”; inserted

“and registrations under this article” in subsection (a); inserted “or her” in the first sentence of subsection (b); in subsection (c), deleted “registration” preceding “renewal” near the beginning, inserted “or registered veterinary technician” and inserted “or she” near the middle; rewrote paragraphs (d)(1) and (d)(2); and added “during such inactivity” at the end of the last sentence in subsection (e). The 2003 amendment by § 2-2 of Ga. L. 2003, p. 615, rewrote paragraphs (d)(1) and (d)(2). For effective date of the 2003 amendment, see the delayed effective date note.

The 2010 amendment, effective May 20, 2010, deleted “written” preceding “application” near the end of the first sentence of subsection (b).

Editor’s notes. — Former Code Section 43-50-26 has been redesignated as Code Section 43-50-40 by Ga. L. 2003, p. 615, § 1-1.

43-50-41. Disciplinary action; subpoenas; judicial review; reinstatement; investigatory powers; immunity; failure to appear; voluntary surrender of license or registration.

(a) The board is authorized to refuse to grant a license or registration to an applicant, to revoke the license or registration of a person licensed or registered by the board, or to discipline a person licensed or registered under this chapter or any antecedent law, upon a finding by a majority of the entire board that the licensee, registrant, or applicant has:

(1) Failed to demonstrate the qualifications or standards for a license or registration contained in this chapter or in the rules and regulations issued by the board, pursuant to specific statutory authority. It shall be incumbent upon the applicant to demonstrate to the satisfaction of the board that he or she meets all the requirements for the issuance of a license or registration, and, if the board is not satisfied as to the applicant’s qualifications, it may deny a license or registration without a prior hearing; provided, however, that the applicant shall be allowed to appear before the board if he or she so desires;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of veterinary medicine or veterinary

technology on any document connected therewith; or practiced fraud or deceit or intentionally made any false statement in obtaining a license or registration to practice veterinary medicine or veterinary technology; or made a false statement or deceptive biennial renewal with the board;

(3) Been convicted of any felony or of any crime involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States. As used in this paragraph, the term "felony" shall include any offense which, if committed in this state, would be deemed a felony without regard to its designation elsewhere. As used in this paragraph, the term "conviction" shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;

(4) Been arrested, charged, and sentenced for the commission of any felony, or any crime involving moral turpitude, where:

(A) A plea of nolo contendere was entered to the charge;

(B) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(C) An adjudication or sentence was otherwise withheld or not entered on the charge.

The plea of nolo contendere or the order entered pursuant to the provisions of Article 3 of Chapter 8 of Title 42 or other first offender treatment shall be conclusive evidence of arrest and sentencing for such crime;

(5) Had his or her license to practice veterinary medicine or registration to practice veterinary technology revoked, suspended, or annulled by any lawful licensing veterinary medical authority other than the board; or had other disciplinary action taken against him or her by any lawful licensing or registering veterinary medical authority other than the board; or was denied a license or registration by any lawful licensing veterinary medical authority other than the board, pursuant to disciplinary proceedings; or was refused the renewal of a license or registration by any lawful licensing veterinary medical authority other than the board, pursuant to disciplinary proceedings;

(6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee, registrant, or applicant to practice veterinary medicine or veterinary technology, or of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual

injury or be directly related to the practice of veterinary medicine or veterinary technology but shows that the licensee, registrant, or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness. Unprofessional conduct shall also include any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing veterinary medical practice or veterinary technology practice. Unprofessional conduct shall also include, but not be limited to, the following: failure to keep veterinary facility premises and equipment in a clean and sanitary condition; dishonesty or gross negligence in the inspection of food-stuffs or the issuance of health or inspection certificates; or cruelty to animals;

(7) Knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed or unregistered person or any licensee or registrant whose license or registration has been suspended or revoked by the board to practice veterinary medicine or veterinary technology or to practice outside the scope of any disciplinary limitation placed upon the licensee or registrant by the board;

(8) Violated a statute, law, or any rule or regulation of this state, any other state, the board, the United States, or any other lawful authority (without regard to whether the violation is criminally punishable), which statute, law, rule, or regulation relates to or in part regulates the practice of veterinary medicine or veterinary technology, when the licensee, registrant, or applicant knows or should know that such action violates such statute, law, rule, or regulation; or violated the lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or license reinstatement;

(9) Been adjudged mentally incompetent by a court of competent jurisdiction within or without this state. Any such adjudication shall automatically suspend the license or registration of any such person and shall prevent the reissuance or renewal of any license or registration so suspended for as long as the adjudication of incompetence is in effect;

(10) Displayed an inability to practice veterinary medicine or veterinary technology with reasonable skill and safety to patients or has become unable to practice veterinary medicine or veterinary technology with reasonable skill and safety to patients by reason of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition, or by reason of displaying habitual intoxication, addiction to, or recurrent personal misuse of alcohol, drugs, narcotics, chemicals, or any other type of similar substances. In enforcing this paragraph, the board

may, upon reasonable grounds, require a licensee, registrant, or applicant to submit to a mental or physical examination by physicians designated by the board. The results of such examination shall be admissible in any hearing before the board, notwithstanding any claim of privilege under a contrary rule of law or statute. Every person who shall accept the privilege of practicing veterinary medicine or veterinary technology in this state or who shall file an application for a license or registration to practice veterinary medicine or veterinary technology in this state shall be deemed to have given that person's consent to submit to such mental or physical examination and to have waived all objections to the admissibility of the results in any hearing before the board upon the grounds that the same constitutes a privileged communication. If a licensee, registrant, or applicant fails to submit to such an examination when properly directed to do so by the board, unless such failure is due to circumstances beyond his or her control, the board may enter a final order upon proper notice, hearing, and proof of such refusal. Any licensee, registrant, or applicant who is prohibited from practicing veterinary medicine or veterinary technology under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate to the board that such person can resume or begin the practice of veterinary medicine or veterinary technology with reasonable skill and safety to patients;

(11) Failed to register with the division director as required by law. It shall be the duty of every licensee or registrant to notify the board of any change in his or her address of record with the board; provided, however, that, for a period established by the division director after failure to register, a license or registration may be reinstated by payment of a registration fee to be determined by the board by rule and by filing of a special application therefor. After this period has elapsed, a license or registration may be revoked for failure to register and for failure to pay the fee as provided by law;

(12) Engaged in the excessive prescribing or administering of drugs or treatment or the use of diagnostic procedures which are detrimental to the patient as determined by the customary practice and standards of the local community of licensees; or knowingly prescribed controlled drug substances or any other medication without a legitimate veterinary medical purpose; or knowingly overprescribed controlled drug substances or other medication, in light of the condition of the patient at the time of prescription;

(13) Knowingly made any fraudulent, misleading, or deceptive statement in any form of advertising or made any statement in any advertisement concerning the quality of the veterinary services rendered by that licensed veterinarian or any licensed veterinarian

associated with him or her. For purposes of this paragraph, "advertising" shall include any information communicated in a manner designed to attract public attention to the practice of the licensee or registrant;

(14) Used, prescribed, or sold any veterinary prescription drug or prescribed an extralabel use of any drug in the absence of a valid veterinarian-client-patient relationship; or

(15) Has had his or her U.S. Drug Enforcement Administration privileges restricted or revoked.

(b) The provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," with respect to emergency action by the board and summary suspension of a license or registration are adopted and incorporated by reference into this chapter.

(c) For purposes of this Code section, the board may obtain, and is authorized to subpoena, upon reasonable grounds, any and all records relating to the mental or physical condition of a licensee, registrant, or applicant, and such records shall be admissible in any hearing before the board.

(d) When the board finds that any person is unqualified to be granted a license or registration or finds that any person should be disciplined pursuant to subsection (a) of this Code section, the board may take any one or more of the following actions:

(1) Refuse to grant or renew a license or registration to an applicant;

(2) Administer a public or private reprimand, but a private reprimand shall not be disclosed to anyone other than the person reprimanded;

(3) Suspend any license or registration for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said license or registration;

(4) Limit or restrict any license or registration as the board deems necessary for the protection of the public;

(5) Revoke any license or registration; or

(6) Condition the penalty upon, or withhold formal disposition pending, the applicant's, registrant's, or licensee's submission to such care, counseling, or treatment as the board may direct.

(e) In addition to and in conjunction with the actions described in subsection (d) of this Code section, the board may make a finding adverse to the licensee, registrant, or applicant but withhold imposition of judgment and penalty; or it may impose the judgment and penalty

but suspend enforcement thereof and place the licensee or registrant on probation, which probation may be vacated upon noncompliance with such reasonable terms as the board may impose.

(f) Initial judicial review of a final decision of the board shall be had solely in the superior court of the county of domicile of the board.

(g) In its discretion, the board may reinstate a license or registration which has been revoked or issue a license or registration which has been denied or refused, following such procedures as the board may prescribe by rule; and, as a condition thereof, it may impose any disciplinary or corrective method provided in this chapter.

(h)(1) The division director is authorized to make, or cause to be made through employees or contract agents of the board, such investigations as he or she or the board may deem necessary or proper for the enforcement of the provisions of this chapter. Any person properly conducting an investigation on behalf of the board shall have access to and may examine any writing, document, or other material relating to the fitness of any licensee, registrant, or applicant. The division director or his or her appointed representative may issue subpoenas to compel such access upon a determination that reasonable grounds exist for the belief that a violation of this chapter or any other law relating to the practice of veterinary medicine or veterinary technology may have taken place.

(2) The results of all investigations initiated by the board shall be reported solely to the board, and the records of such investigations shall be kept for the board by the division director, with the board retaining the right to have access at any time to such records. No part of any such records shall be released, except to the board, for any purpose other than a hearing before the board, nor shall such records be subject to subpoena; provided, however, that the board shall be authorized to release such records to another enforcement agency or lawful licensing authority.

(3) The board shall have the authority to exclude all persons during its deliberations on disciplinary proceedings and to discuss any disciplinary matter in private with a licensee, registrant, or applicant and the legal counsel of that licensee, registrant, or applicant.

(i) A person, firm, corporation, association, authority, or other entity shall be immune from civil and criminal liability for reporting or investigating the acts or omissions of a licensee, registrant, or applicant which violate the provisions of subsection (a) of this Code section or any other provision of law relating to a licensee's, registrant's, or applicant's fitness to practice as a licensed veterinarian or registered veterinary technician or for initiating or conducting proceedings against such

licensee, registrant, or applicant, if such report is made or action is taken in good faith, without fraud or malice. Any person who testifies or who makes a recommendation to the board in the nature of peer review, in good faith, without fraud or malice, before the board in any proceeding involving the provisions of subsection (a) of this Code section or any other law relating to a licensee's, registrant's, or applicant's fitness to practice as a licensed veterinarian or registered veterinary technician shall be immune from civil and criminal liability for so testifying.

(j) Neither a denial of a license or registration on grounds other than those enumerated in subsection (a) of this Code section nor the issuance of a private reprimand nor the denial of a license or registration by endorsement nor the denial of a request for reinstatement of a revoked license or registration nor the refusal to issue a previously denied license or registration shall be considered to be a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Notice and hearing within the meaning of Chapter 13 of Title 50 shall not be required, but the applicant, registrant, or licensee shall be allowed to appear before the board if he or she so requests.

(k) If any licensee, registrant, or applicant fails to appear at any hearing after reasonable notice, the board may proceed to hear the evidence against such licensee, registrant, or applicant and take action as if such licensee, registrant, or applicant had been present. A notice of hearing, initial or recommended decision, or final decision of the board in a disciplinary proceeding shall be served upon the licensee, registrant, or applicant by certified mail or statutory overnight delivery, return receipt requested, to the last known address of record with the board. If such material is returned marked "unclaimed" or "refused" or is otherwise undeliverable and if the licensee, registrant, or applicant cannot, after diligent effort, be located, the division director shall be deemed to be the agent for service for such licensee, registrant, or applicant for purposes of this Code section, and service upon the division director shall be deemed to be service upon the licensee, registrant, or applicant.

(l) The voluntary surrender of a license or registration shall have the same effect as a revocation of the license or registration, subject to reinstatement in the discretion of the board.

(m) This Code section shall apply equally to all licensees, registrants, or applicants whether individuals, partners, or members of any other incorporated or unincorporated associations, corporations, or other associations of any kind whatsoever.

(n) All subpoenas issued pursuant to the authority granted in this chapter shall be subject to the general rules of law with respect to

distance, tender of fees and expenses, and protective orders; and any motion made with respect thereto shall be made to and passed on by a judge of the superior court of the county of residence of the person to whom the subpoena is directed.

(o) Any proceeding or administrative action instituted under this Code section shall be governed by the provisions of this Code section as they existed in full force and effect on the date of the commission of the act or acts constituting a violation of this Code section, except as otherwise specifically declared by the General Assembly. (Code 1933, § 84-1510, enacted by Ga. L. 1950, p. 254, § 4; Code 1933, § 84-1509, enacted by Ga. L. 1965, p. 92, § 1; Ga. L. 1973, p. 260, § 4; Ga. L. 1974, p. 1441, § 3; Code 1981, § 43-50-27; Ga. L. 1982, p. 1065, § 5; Ga. L. 1988, p. 1589, § 4; Ga. L. 2000, p. 1589, § 3; Ga. L. 2000, p. 1706, § 19; Code 1981, § 43-50-41, as redesignated by Ga. L. 2003, p. 615, § 1-1; Ga. L. 2005, p. 60, § 43/HB 95.)

Cross references. — False or fraudulent advertising, § 10-1-420 et seq.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, in paragraph (d)(3) “an” was substituted for “a” preceding “indefinite period”, and near the beginning of subsection (e) the correct spelling of “conjunction” was substituted.

Pursuant to Code Section 28-9-5, in 1999, “paragraph” was substituted for “subsection” in the last sentence of paragraph (a)(10).

Editor’s notes. — Ga. L. 2005, p. 60, § 43(10), which amended this Code section, purported to amend Code Section 43-50-27 but actually amended Code Section 43-50-41.

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to subsection (k) is applicable with respect to notices delivered on or after July 1, 2000.

JUDICIAL DECISIONS

Procedure for administrative review is adequate remedy at law, precluding equitable relief. — When a statute provides a party with means of review by administrative agency, such procedure is generally an adequate remedy at law so as to preclude the grant of

equitable relief. *Brogdon v. State Bd. of Veterinary Medicine*, 244 Ga. 780, 262 S.E.2d 56 (1979).

Cited in *Brown v. Georgia State Bd. of Veterinary Medicine*, 134 Ga. App. 574, 215 S.E.2d 332 (1975).

RESEARCH REFERENCES

ALR. — Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 ALR 1388.

What constitutes statutory offense of cruelty to animals, 82 ALR2d 794.

Practices forbidden by state deceptive

trade practice and consumer protection acts, 89 ALR3d 449.

Veterinarian’s liability for malpractice, 71 ALR4th 811.

What constitutes offense of cruelty to animals—modern cases, 6 ALR5th 733.

43-50-42. Issuance and renewal of temporary license by board.

(a) The board may issue a temporary license to the following applicants who are qualified to take the veterinary license examination:

(1) An applicant licensed in another state. Such license shall have the same force and effect as a permanent license until the time of its expiration; and

(2) An applicant who is not the holder of any veterinary license. Such license shall authorize the applicant to work under the supervision of a licensed veterinarian as provided by the board.

(b) The temporary license shall expire on the date that permanent licenses are issued to persons who have passed the examination provided for in Code Section 43-50-32, which examination occurred immediately following the issuance of the temporary license.

(c) A temporary license issued pursuant to this Code section may, in the discretion of the board, be renewed for one six-month period only; provided, however, that no temporary license shall be issued, renewed, or reissued to a person who fails to pass the examination established by the board. (Ga. L. 1973, p. 260, § 2; Code 1981, § 443-50-29; Ga. L. 1982, p. 1065, § 6; Code 1981, § 43-50-42, as redesignated by Ga. L. 2003, p. 615, § 1-1.)

Administrative rules and regulations. — Temporary license, Official Compilation of the Rules and Regulations of

the State of Georgia, State Board of Veterinary Medicine, Chapter 700-4.

RESEARCH REFERENCES

ALR. — Disqualification, for bias or interest, of member of occupation or pro-

fession sitting in license revocation proceeding, 97 ALR2d 1210.

43-50-43. Veterinary faculty licenses.

The board may, in its discretion, issue a veterinary faculty license to any qualified applicant associated with one of this state's institutions of higher learning and involved either in research activities within such institution or in the instructional program of either undergraduate or graduate veterinary medical students, subject to the following conditions:

(1) That the holder of the veterinary faculty license shall be remunerated for the practice aspects of his or her services solely from state, federal, or institutional funds and not from the patient-owner beneficiary of his or her practice efforts;

(2) That the applicant will furnish the board with such proof as the board may deem necessary to demonstrate that the applicant is a

graduate of a reputable school or college of veterinary medicine; that the applicant has or will have a faculty position at an institution which meets the requirements of paragraph (1) of this Code section, as certified by an authorized administrative official at such institution; and that the applicant understands and agrees that the faculty license is valid only for the practice of veterinary medicine as a faculty member of the institution;

(3) That the license issued under this Code section may be revoked or suspended or the licensee may be otherwise disciplined in accordance with Code Section 43-50-41; and

(4) That the license issued under this Code section may be canceled by the board upon receipt of information that the holder of the veterinary faculty license has left or has otherwise been discontinued from faculty employment at an institution of higher learning of this state. (Code 1933, § 84-1513, enacted by Ga. L. 1973, p. 260, § 6; Code 1981, § 43-50-30; Ga. L. 1982, p. 1065, § 7; Ga. L. 1988, p. 1589, § 6; Code 1981, § 43-50-43, as redesignated by Ga. L. 2003, p. 615, § 1-1.)

Administrative rules and regulations. — Faculty license, Official Compilation of the Rules and Regulations of the

State of Georgia, State Board of Veterinary Medicine, Chapter 700-5.

43-50-44. Exemptions from article.

This article shall not be construed to prohibit:

(1)(A) An employee of the federal, state, or local government or any contractual partner thereof from performing his or her duties relating to animals owned by or on loan to such employer or the control of stray animals; or

(B) Any employee of a public or private college or university from performing his or her duties relating to animals owned by or on loan to such employer;

(2) A person who is a regular student in a veterinary school or school of veterinary technology performing duties or actions assigned by his or her instructors or working under the supervision of a licensed veterinarian;

(3) A person, compensated or otherwise, from performing acceptable livestock management practices, which practices shall include, but not be limited to, castration of food animals, dehorning without the use of prescription drugs or surgical closure of wounds, hoof trimming or shoeing, docking, ear notching, removing needle teeth, testing for pregnancy, implantation of over-the-counter growth implants, implantation of over-the-counter identification devices, artificial insemination, the use of federally approved over-the-counter products, branding, collecting of fluids for genetic identification and

classification, semen collection and storage, and the use of ultrasound for collection of production data and similar nondiagnostic purposes;

(4) A person assisting with a nonsurgical fetal delivery in a food animal, provided that no fee is charged;

(5) The actions of a veterinarian currently licensed in another state, province of Canada, or a United States territory in consulting with a licensee of this state but who:

(A) Does not open an office or appoint a place to do business within this state;

(B) Does not print or use letterhead or business cards reflecting in-state addresses;

(C) Does not establish answering services or advertise the existence of a practice address within this state;

(D) Does not practice veterinary medicine as a consultant rendering services directly to the public without the direction of a licensed veterinarian of this state more than two days per calendar year; and

(E) Is providing services for an organization conducting a public event lasting less than ten days that utilizes animals in need of veterinary examinations, treatments, or oversight to promote the safety and health of the public, the event, and the animal participants; provided, however, that a veterinarian licensed in another state who practices veterinary medicine on animals belonging to residents of this state by communicating directly with such owners and independent of the attending veterinary licensee is not exempt from this state's licensing requirements;

(6) Any merchant or manufacturer selling, at his or her regular place of business, medicines, feed, appliances, or other products used in the prevention or treatment of animal diseases. This shall not be construed to authorize the sale of medicines which must be obtained by a prescription from a pharmacist but shall only include the right to sell those medicines which are classified as proprietary and which are commonly known as over-the-counter medicines;

(7)(A) The owner of an animal or the owner's full-time regular employee caring for and treating the animal belonging to such owner; or

(B) The owner's friend or relative caring for or treating the animal belonging to such owner, provided that no fee is charged and the friend or relative does not solicit, advertise, or regularly engage in providing such care or treatment or administer or dispense prescription drugs without a valid prescription;

(8) The owner, operator, or employee of a licensed kennel, animal shelter, or stable or of a pet-sitting service providing food, shelter, or

supervision of an animal or administering prescription drugs pursuant to prescription of a licensed veterinarian or over-the-counter medicine to an animal;

(9) A member of the faculty, a resident, an intern, or a graduate student of an accredited college or school of veterinary medicine or school of veterinary technology performing his or her regular nonclinical functions or a person lecturing or giving instructions or demonstrations at an accredited college or school of veterinary medicine or school of veterinary technology in connection with a continuing education course or seminar;

(10) Any person selling or applying any pesticide, insecticide, or herbicide;

(11) Any person engaging in bona fide scientific research which reasonably requires experimentation involving animals;

(12) Any person performing artificial insemination;

(13) An employee of a licensed veterinarian administering prescribed care to an animal under the appropriate supervision of the veterinarian;

(14) A graduate of a foreign college or school of veterinary medicine who is in the process of obtaining the ECFVG certificate or its substantial equivalent performing duties or actions under the direct supervision of a licensed veterinarian;

(15) The owner of an animal, the owner's employee, or a member of a nationally recognized organization that acknowledges individuals performing embryo transfer or artificial breeding and which organization is approved by the board from:

(A) The nonsurgical removal of an embryo from an animal for the purpose of transplanting such embryo into another female animal, cryopreserving such embryo, or implanting such embryo in an animal, provided that the use of prescription medications in such animals is maintained under the direction of a licensed veterinarian with a valid veterinarian-client-patient relationship; or

(B) The testing and evaluation of semen;

(16) Any other licensed or registered health care provider utilizing his or her special skills so long as the treatment of the animal is under the direction of a licensed veterinarian with a valid veterinary-client-patient relationship;

(17) A person performing soft tissue animal massage or other forms of soft tissue animal manipulation;

(18) A person performing aquaculture or raniculture management practices;

(19) A person implanting electronic identification devices in small companion animals; or

(20) An employee or contractual partner of a zoological park or aquarium accredited by the American Zoo and Aquarium Association or other substantially equivalent nationally recognized accrediting agency as determined by the board from performing his or her duties that are approved by a licensed veterinarian and relate to animals owned by or on loan to such zoological park or aquarium. (Code 1933, § 84-1503, enacted by Ga. L. 1965, p. 92, § 1; Ga. L. 1973, p. 260, § 1; Code 1981, § 43-50-32; Ga. L. 1993, p. 700, § 1; Code 1981, § 43-50-44, as redesignated by Ga. L. 2003, p. 615, § 1-1; Ga. L. 2006, p. 30, § 2/HB 999.)

JUDICIAL DECISIONS

Cited in *Brown v. Georgia State Bd. of Veterinary Medicine*, 134 Ga. App. 574, 215 S.E.2d 332 (1975).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 84-1501, as it read prior to revision of the chapter by Ga. L. 1965, p. 92, are included in the annotations for this Code section.

Embryo transfer process constitutes the practice of veterinary medicine under O.C.G.A. § 43-50-3. 1984 Op. Att'y Gen. No. 84-86 (decided prior to 1993 amendment).

It is not unlawful for a county agent to advise farmers about what might be wrong with the farmers' livestock. 1962 Op. Att'y Gen. p. 393 (decided under former Code 1933, § 84-1501).

County agent teaching farmers how to treat livestock is not practicing veterinary medicine. 1962 Op. Att'y Gen. p. 393 (decided under former Code 1933, § 84-1501).

Castrating, dehorning, and hoof

trimming do not constitute practice of veterinary medicine. 1962 Op. Att'y Gen. p. 393 (decided under former Code 1933, § 84-1501).

Examination of animal for pregnancy. — Examination to discover whether or not an animal is pregnant would not be practicing veterinary medicine as defined in former Code 1933, §§ 84-1502 (see O.C.G.A. § 43-50-3) and 84-1503 (see O.C.G.A. §§ 43-50-21 and 43-50-22) for the reason that pregnancy is not considered a disease; the intention of the law is to prohibit laymen from practicing veterinary medicine as defined. 1962 Op. Att'y Gen. p. 393 (decided under former Code 1933, § 84-1501).

Deworming and treatment of foot rot might be considered practicing veterinary medicine. 1962 Op. Att'y Gen. p. 393 (decided under former Code 1933, § 84-1501).

RESEARCH REFERENCES

ALR. — Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

43-50-45. Unlawful acts; penalties; injunctions.

(a) Any person who practices veterinary medicine without a valid license in violation of this article shall be guilty of the misdemeanor offense of practicing veterinary medicine without a license and, upon conviction thereof, shall be punished as provided in this Code section, provided that each act of such unlawful practice shall constitute a distinct and separate offense.

(b) Upon being convicted a first time under this Code section, such person shall be punished by a fine of not more than \$500.00 for each offense. Upon being convicted a second or subsequent time under this Code section, such person shall be punished by a fine of not more than \$1,000.00 for each offense, imprisonment for not more than 12 months, or both such fine and imprisonment.

(c) The board or any citizen of this state may bring an action to enjoin any person from practicing veterinary medicine without a valid license. If the court finds that the person is violating, or is threatening to violate, this article, it shall enter an injunction restraining him or her from such unlawful acts.

(d) The successful maintenance of an action based on any one of the remedies set forth in this Code section shall in no way prejudice the prosecution of an action based on any other of the remedies. (Code 1933, § 84-1512, enacted by Ga. L. 1965, p. 92, § 1; Code 1981, § 43-50-33; Code 1981, § 43-50-45, as redesignated by Ga. L. 2003, p. 615, § 1-1.)

RESEARCH REFERENCES

ALR. — Injunction as available remedy against prosecution or arrest for conducting business or practicing profession without a license, 167 ALR 915.

Practicing medicine, surgery, dentistry, optometry, podiatry, or other healing arts

without license as a separate or continuing offense, 99 ALR2d 654.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

PART 3**VETERINARY TECHNICIANS**

Editor's notes. — Ga. L. 2003, p. 615, § 1-1, effective July 1, 2003, redesignated the Code sections formerly codified as Ar-

ticle 3 as present Part 3 of Article 3 consisting of Code Sections 43-50-50 through 43-50-56.

43-50-50. Purpose of part.

It is the purpose of this part to encourage more effective utilization of the skills of licensed veterinarians by enabling them to delegate certain veterinary health care tasks to veterinary technicians where such

delegation is consistent with the animal patient's health and welfare. (Code 1981, § 43-50-50, enacted by Ga. L. 1983, p. 705, § 1; Ga. L. 2003, p. 615, § 1-1; Ga. L. 2006, p. 30, § 3/HB 999.)

43-50-51. Practice of veterinary technology by veterinary technician.

(a) Subject to the provisions of this Code section, the practice of veterinary technology by a veterinary technician shall not be a violation of subsection (a) of Code Section 43-50-30 or subsection (a) of Code Section 43-50-45.

(b) No veterinary technician shall make a diagnosis or prognosis, prescribe treatment, perform surgery, or prescribe medication for any animal. (Code 1981, § 43-50-51, enacted by Ga. L. 2006, p. 30, § 3/HB 999.)

Editor's notes. — The former Code section, defining terms, was based on Code 1981, § 43-50-51, enacted by Ga. L. 1983, p. 705, § 1; Ga. L. 1984, p. 22, § 43 and was repealed by Ga. L. 2003, p. 615, § 1-1, effective July 1, 2003.

43-50-52. Application for registration as veterinary technician; qualifications; examination; renewal; applicants registered in other states; board's responsibility.

(a)(1) Any person desiring to work as a veterinary technician in this state shall apply to the board for a certificate of registration as a veterinary technician. All such applications shall be made on forms provided by the board and shall be accompanied by such fee as may be required by the board.

(2) The application shall include evidence, satisfactory to the board, that:

(A) The applicant has attained the age of 18;

(B) The applicant is of good moral character;

(C)(i) The applicant is a graduate of a college or technical school course of study in veterinary technology from an institution accredited by the American Veterinary Medical Association, including without limitation instruction in the operation of life sustaining oxygen equipment, and has successfully passed an examination required by the board; or

(ii) The applicant has successfully completed a college course of study in the care and treatment of animals from an institution having a curriculum approved by the board, including without limitation instruction in the operation of life sustaining oxygen

equipment, and has successfully passed an examination required by the board; and

(D) The applicant meets such other qualifications or provides such other information as the board may require by rule or regulation.

(b) Until July 1, 2009, any person who during the period from July 1, 1993, through June 30, 2008, acquired a minimum of five years' experience assisting a licensed veterinarian may, with a signed affidavit from his or her supervising veterinarian attesting to his or her level of on-the-job training, be allowed to take the examination approved by the board. Upon receiving a passing grade on such examination, the board may issue a certificate of registration. The board shall provide a list of appropriate study materials to candidates.

(c) Until January 1, 2005, any person who at any time prior to July 1, 2003, was certified as a veterinary technician in this state shall be entitled to renew such registration without examination and without meeting any requirements of subparagraph (a)(2)(C) of this Code section.

(d) The board may issue a certificate of registration to an applicant if the applicant is currently registered in another state having standards for admission substantially the same as this state and such standards were in effect at the time the applicant was first admitted to practice in the other state.

(e) The board shall be responsible for registering any person who wishes to practice as a veterinary technician in this state and in accordance with this part shall govern such practice by board rule or regulation as the board deems appropriate and necessary for the protection of the public health, safety, and general welfare. (Code 1981, § 43-50-52, enacted by Ga. L. 1983, p. 705, § 1; Ga. L. 1984, p. 22, § 43; Ga. L. 1984, p. 544, § 1; Ga. L. 2003, p. 615, § 1-1; Ga. L. 2006, p. 30, § 3/HB 999.)

43-50-53. Scheduling and administration of examinations; reexamination; reactivation.

(a) The board shall hold at least one registration examination for applicants annually or allow applicants to take automated tests at such locations and at such times as determined by the board.

(b) The board shall establish rules or regulations governing the preparation, administration, and grading of the examination. The board may adopt the National Veterinary Technicians Examination prepared by the Professional Examination Service or any other such examination prepared to the board's standards and satisfaction.

(c) The board shall establish by rule or regulation the score needed to pass any examination.

(d) If an applicant fails an examination, the applicant may take a subsequent examination upon payment of the registration and examination fees. No person may take the examination more than three times without review and approval by the board under such circumstances as the board deems appropriate.

(e) Any veterinary technician in this state whose certificate of registration has been on inactive status for at least five consecutive years and who desires to reactivate such registration shall be required to take continuing education, pay all fees, and meet all other requirements and board rules or regulations for registration as a veterinary technician. It shall be the duty of the board to approve study materials that may be used to assist such persons in preparing for any examination. (Code 1981, § 43-50-53, enacted by Ga. L. 1983, p. 705, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2003, p. 615, § 1-1; Ga. L. 2006, p. 30, § 3/HB 999.)

43-50-54. Supervision required; prohibited activities of technician.

(a) Any veterinary technician must at all times be under the supervision of a licensed veterinarian whenever practicing veterinary technology in this state. The level of supervision shall be consistent with the delegated animal health care task. Subject to the provisions of subsection (b) of Code Section 43-50-51, a licensed veterinarian may in his or her discretion delegate any animal health care task to a veterinary technician; provided, however, that the board may establish by rules or regulations, in such general or specific terms as it deems necessary and appropriate for purposes of this part, the level of supervision, whether direct supervision, immediate supervision, or indirect supervision, that is required by the licensed veterinarian for any delegated animal health care task to be performed by a veterinary technician. Such rules or regulations may require lower levels of supervision for veterinary technicians as compared to veterinary assistants performing the same or similar animal health care tasks.

(b) Specifically and without limitation, the board may take disciplinary action against a veterinary technician if the technician:

(1) Solicits patients from a licensed veterinarian;

(2) Solicits or receives any form of compensation from any person for veterinary services rendered other than from the licensed veterinarian or corporation under whom the veterinary technician is employed;

(3) Willfully or negligently divulges a professional confidence or discusses a licensed veterinarian's diagnosis or treatment without the express permission of the licensed veterinarian; or

(4) Demonstrates a manifest incapability or incompetence to perform as a veterinary technician.

(c) A veterinary technician shall not be utilized in any manner which would be in violation of this article.

(d) A veterinary technician shall not be utilized to perform the duties of a pharmacist licensed under Chapter 4 of Title 26. (Code 1981, § 43-50-54, enacted by Ga. L. 1983, p. 705, § 1; Ga. L. 1999, p. 81, § 43; Ga. L. 2000, p. 1706, § 19; Ga. L. 2003, p. 615, § 1-1; Ga. L. 2006, p. 30, § 3/HB 999.)

43-50-55. Posting notice of use of veterinary technicians; proper identification; limitation on number of technicians supervised and employed; exception.

(a) Any licensed veterinarian, animal clinic, or animal hospital using veterinary technicians shall post a notice to that effect in a prominent place.

(b) A veterinary technician must clearly identify himself or herself as such in order to ensure that he or she is not mistaken by the public as a licensed veterinarian. This may be accomplished, for example, by the wearing of an appropriate name tag. Any time the veterinary technician's name appears in a professional setting, his or her status must be shown as "veterinary technician."

(c)(1) No licensed veterinarian shall have more than four veterinary technicians on duty under his or her supervision at any one time.

(2) No licensed veterinarian shall practice veterinary medicine at a veterinary facility when the number of veterinary technicians employed at such veterinary facility exceeds the number of licensed veterinarians regularly engaged in the practice of veterinary medicine at such veterinary facility by a ratio of more than 2:1.

(3) The provisions of paragraphs (1) and (2) of this subsection shall not apply to any licensed veterinarian engaged in a specialty practice if he or she is certified for such specialty practice by a college approved for such purpose by the American Veterinary Medical Association or its successor organization; provided, however, that no such licensed veterinarian shall engage in such specialty practice at a veterinary facility when the number of veterinary technicians employed at such veterinary facility exceeds the number of licensed veterinarians regularly engaged in a specialty practice of veterinary

medicine at such veterinary facility by a ratio of more than 5:1. (Code 1981, § 43-50-55, enacted by Ga. L. 1983, p. 705, § 1; Ga. L. 2003, p. 615, § 1-1; Ga. L. 2006, p. 30, § 3/HB 999.)

43-50-56. Veterinarian responsible for veterinary technician's violations of limitations on duties.

A veterinarian who utilizes a veterinary technician shall be responsible for any violation of any limitations which are placed on the duties of a veterinary technician. (Code 1981, § 43-50-56, enacted by Ga. L. 1983, p. 705, § 1; Ga. L. 2003, p. 615, § 1-1; Ga. L. 2006, p. 30, § 3/HB 999.)

43-50-57. Termination or suspension of approval of use of veterinary technician; revocation or suspension of technician's registration certificate.

Repealed by Ga. L. 2003, p. 615, § 1-1, effective July 1, 2003.

Editor's notes. — This Code section enacted by Ga. L. 1983, p. 705, § 1; Ga. L. 1988, p. 1589, § 8. was based on Code 1981, § 43-50-57, enacted by Ga. L. 1983, p. 705, § 1; Ga. L. 1988, p. 1589, § 8.

43-50-58. Revocation or suspension of board's approval of use of registered animal technician; revocation or suspension of technician's registration certificate.

Repealed by Ga. L. 1983, p. 705, § 1, effective July 1, 1983.

Editor's notes. — This Code section reservation of this Code section without was based on Ga. L. 1973, p. 260, § 6. change. Ga. L. 2003, p. 615, § 1-1, reenacted the

43-50-59. Powers of board under article generally.

Repealed by Ga. L. 1983, p. 705, § 1, effective July 1, 1983.

Editor's notes. — This Code section reservation of this Code section without was based on Ga. L. 1973, p. 260, § 6. change. Ga. L. 2003, p. 615, § 1-1, reenacted the

ARTICLE 3A

VETERINARY ASSISTANTS

Administrative rules and regulations. — Supervision responsibilities of veterinary assistants, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Veterinary Medicine, Chapter 700-15.

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, Veterinarians, § 11.

43-50-60. Purpose.

It is the purpose of this article to encourage more effective utilization of the skills of licensed veterinarians by enabling them to delegate certain veterinary health care tasks to veterinary assistants where such delegation is consistent with the animal patient's health and welfare. (Code 1981, § 43-50-60, enacted by Ga. L. 2006, p. 30, § 4/HB 999.)

Editor's notes. — Ga. L. 2006, p. 30, 43-50-60 as present Code Section § 4/HB 999, effective March 30, 2006, 43-50-80. redesignated former Code Section

43-50-61. Practice of veterinary technology by a veterinary assistant.

(a) Subject to the provisions of this Code section, the practice of veterinary technology by a veterinary assistant shall not be a violation of subsection (a) of Code Section 43-50-30 or subsection (a) of Code Section 43-50-45.

(b) No veterinary assistant shall make a diagnosis or prognosis, prescribe treatment, perform surgery, prescribe medication, perform a nonemergency intubation, induce anesthesia, perform central venous catheterization, or perform arterial catheterization and arterial collection for any animal. (Code 1981, § 43-50-61, enacted by Ga. L. 2006, p. 30, § 4/HB 999.)

43-50-62. Supervision required; prohibited uses of veterinary assistant.

(a) Any veterinary assistant must at all times be under the supervision of a licensed veterinarian whenever practicing veterinary technology in this state. The level of supervision shall be consistent with the delegated animal health care task. Subject to the provisions of subsection (b) of Code Section 43-50-61, a licensed veterinarian may in his or her discretion delegate any animal health care task to a veterinary assistant; provided, however, that the board may establish by rules or regulations, in such general or specific terms as it deems necessary and appropriate for purposes of this article, the level of supervision, whether direct supervision, immediate supervision, or indirect supervision, that is required by the licensed veterinarian for any delegated animal health care task to be performed by a veterinary assistant. Such

rules or regulations may require higher levels of supervision for veterinary assistants as compared to veterinary technicians performing the same or similar animal health care tasks.

(b) A veterinary assistant shall not be utilized in any manner which would be in violation of this article.

(c) A veterinary assistant shall not be utilized to perform the duties of a pharmacist licensed under Chapter 4 of Title 26. (Code 1981, § 43-50-62, enacted by Ga. L. 2006, p. 30, § 4/HB 999.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, subsections (c) and (d) were redesignated as subsections (b) and (c), respectively.

43-50-63. Posting notice of use of veterinary assistant; proper identification required.

(a) Any licensed veterinarian, animal clinic, or animal hospital using veterinary assistants shall post a notice to that effect in a prominent place.

(b) A veterinary assistant must clearly identify himself or herself as such in order to ensure that he or she is not mistaken by the public as a licensed veterinarian. This may be accomplished, for example, by the wearing of an appropriate name tag. Any time the veterinary assistant's name appears in a professional setting, his or her status must be shown as "veterinary assistant." (Code 1981, § 43-50-63, enacted by Ga. L. 2006, p. 30, § 4/HB 999.)

43-50-64. Veterinarian ultimately responsible for violations of veterinary assistant.

A veterinarian who utilizes a veterinary assistant shall be responsible for any violation of any limitations which are placed on the duties of a veterinary assistant. (Code 1981, § 43-50-64, enacted by Ga. L. 2006, p. 30, § 4/HB 999.)

43-50-70 and 43-50-71. Redesignated.

Editor's notes. — Ga. L. 2006, p. 30, § 4, effective March 30, 2006, redesignated former Code Sections 43-50-70 and 43-50-71 as present Code Sections 43-50-90 and 43-50-91, respectively.

ARTICLE 4
GOOD SAMARITAN TREATMENT OF ANIMALS

RESEARCH REFERENCES

Am. Jur. 2d. — 57A Am. Jur. 2d, Negligence, § 104 et seq. 78 Am. Jur. 2d., Veterinarians, § 7 et seq.

43-50-80. Good faith emergency treatment to sick or injured animals; no liability.

Any person who gratuitously and in good faith administers emergency treatment to a sick or injured animal at the scene of an accident or emergency shall not be in violation of this chapter and shall not be liable to the owner of such animal in any civil action for damages; provided, however, that this Code section shall not provide immunity for acts of gross negligence. (Code 1981, § 43-50-60, enacted by Ga. L. 2003, p. 615, § 1-1; Code 1981, § 43-50-80, as redesignated by Ga. L. 2006, p. 30, § 4/HB 999.)

Editor's notes. — Ga. L. 2006, p. 30, § 4/HB 999 effective March 30, 2006, redesignated former Code Section 43-50-60 as present Code Section 43-50-80.

ARTICLE 5
FACILITIES AND EQUIPMENT

Delayed effective date. — Ga. L. 2003, p. 615, § 3-1, provides that this article becomes effective only upon the effective date of an appropriation of funds for purposes of this article as expressed in a line item making specific reference to full funding of Ga. L. 2003, p. 615, in an Appropriations Act enacted by the General Assembly. Funds were not appropriated at the 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, or 2011 session of the General Assembly.

43-50-90. (For effective date, see note.) Establishing standards for facilities and equipment; monitoring, investigation, and enforcement actions.

(a) The board shall work cooperatively with licensed veterinarians to establish standards for veterinary facilities and equipment and shall promulgate rules for same.

(b) The board shall have the authority to establish a method to monitor veterinary facilities, conduct investigations and hold proceedings related to alleged violations, and take necessary enforcement action against the license of a veterinarian for violations of rules promulgated under subsection (a) of this Code section. (Code 1981, § 43-50-70, enacted by Ga. L. 2003, p. 615, § 2-3; Code 1981, § 43-50-90, as redesignated by Ga. L. 2006, p. 30, § 4/HB 999.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

Ga. L. 2006, p. 30, § 4/HB 999, effective March 30, 2006, redesignated former Code Section 43-50-70 as present Code Section 43-50-90.

43-50-91. (For effective date, see note.) Facilities accredited by American Zoo and Aquarium Association or equivalent agency exempt.

This article shall not apply to any facility owned by the federal, state, or any local government, a public or private college or university, or a zoological park or aquarium that is accredited by the American Zoo and Aquarium Association or other substantially equivalent nationally recognized accrediting agency as determined by the board. (Code 1981, § 43-50-71, enacted by Ga. L. 2003, p. 615, § 2-3; Code 1981, § 43-50-91, as redesignated by Ga. L. 2006, p. 30, § 4/HB 999.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

Ga. L. 2006, p. 30, § 4/HB 999, effective March 30, 2006, redesignated former Code Section 43-50-71 as present Code Section 43-50-91.

CHAPTER 51

WATER AND WASTEWATER TREATMENT PLANT
OPERATORS AND LABORATORY ANALYSTS

Sec.		Sec.	
43-51-1.	Short title.	43-51-7.	Examinations.
43-51-2.	Definitions.	43-51-8.	Reciprocity.
43-51-3.	Creation of board; members; qualifications; terms; vacancies; expenses; meetings; officers.	43-51-9.	Revocation and suspension of certificates; hearing.
43-51-4.	Division director as administrative agent of board.	43-51-10.	Classification of public water supply systems and wastewater treatment plants.
43-51-5.	Adoption of rules and regulations by board.	43-51-11.	Provision by state agencies operating and maintaining facilities of at least one licensed operator in each departmental district.
43-51-6.	Certification of operators of water or wastewater treatment plants and laboratory analysts; renewal; continuing education; training period.	43-51-12.	Permit conditions.
43-51-6.1.	Establishment of Class IV classifications; certification; renewal; course of training.	43-51-13.	Application by director for injunctive relief authorized; judgment.
		43-51-14.	Penalty.
		43-51-15.	Termination [Repealed].

Cross references. — Control of water pollution and surface water use, T. 12, C. 5, A. 2.
Administrative rules and regula-

tions. — Water quality control, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Natural Resources, Chapter 391-3-6.

OPINIONS OF THE ATTORNEY GENERAL

Persons, other than operators or laboratory analysts, in responsible positions at water and wastewater

treatment plants do not come under the certification scheme of O.C.G.A. Ch. 51, T. 43. 1980 Op. Att’y Gen. No. 80-78.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq. 15A Am. Jur. 2d, Commerce, §§ 1 et seq., 89 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 266, 284 et seq., 332, 339 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 1 et seq. 58 Am. Jur. 2d, Occupations, Trades and Professions, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 14 et seq. 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 42, 61 et seq. 73 Am. Jur. 2d, Statutes, §§ 18 et seq., 60 et seq.

C.J.S. — 15 C.J.S., Commerce, §§ 9 et seq., 83 et seq., 111 et seq. 16 C.J.S., Constitutional Law, § 266 et seq. 16A C.J.S., Constitutional Law, §§ 398, 614, 615. 16B C.J.S., Constitutional Law, § 1063. 16C C.J.S., Constitutional Law, § 1351 et seq. 16D C.J.S., Constitutional Law, §§ 2085, 2086. 53 C.J.S., Licenses, § 6 et seq. 67 C.J.S., Officers and Public Employees, § 15 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq. 73A C.J.S., Public Administrative

Law and Procedure, § 115 et seq. 81A
C.J.S., States, §§ 79 et seq., 120 et seq. 82
C.J.S., Statutes, §§ 203, 281.

43-51-1. Short title.

This chapter shall be known and may be cited as the "Certification of Water and Wastewater Treatment Plant Operators and Laboratory Analysts Act." (Ga. L. 1969, p. 272, § 1; Ga. L. 1980, p. 304, § 1; Ga. L. 1999, p. 81, § 43.)

43-51-2. Definitions.

As used in this chapter, the term:

(1) "Board" means the State Board of Examiners for Certification of Water and Wastewater Treatment Plant Operators and Laboratory Analysts.

(2) "Certificate" means a document issued by the board stating that the operator or laboratory analyst has met the requirements for the specified operator classification of the certification program.

(3) "Director" means the director of the Division of Environmental Protection of the Department of Natural Resources.

(4) "Division" means the Division of Environmental Protection of the Department of Natural Resources.

(5) "Laboratory analyst" means any person who tests water or wastewater samples in conjunction with the operation of public water supply systems or wastewater treatment plants.

(6) "Operator" means any person who performs operational duties and water treatment plant and wastewater treatment plant laboratory testing for reporting purposes for operator classifications I and II, as defined by the board, at wastewater treatment plants, wastewater collection systems, water distribution systems, or public water supply systems.

(7) "Person" means any individual, corporation, company, association, partnership, county, municipality, state agency, federal agency, or other entity.

(8) "Public water supply system" means the system of pipes, structures, and facilities through which water is obtained and treated to be offered to the public for household use or for any other public consumption.

(9) "Wastewater collection system" means the system of sanitary sewers, pipes, manholes, pumps, and other such apparatus used to convey sewage to wastewater treatment plants.

(10) "Wastewater treatment plant" means the facilities provided for the treatment and disposal of wastewater, including industrial process wastewater.

(11) "Water distribution system" means the system of pipes, pumps, valves, and other such apparatus used to distribute water to the public.

(12) "Water treatment plant" means that portion of the water supply system which in some way alters the physical, chemical, or bacteriological quality of the water. (Ga. L. 1969, p. 272, § 2; Ga. L. 1980, p. 304, §§ 2-4; Ga. L. 1985, p. 432, § 1; Ga. L. 1991, p. 954, § 1; Ga. L. 1994, p. 1927, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Board of Examiners may not amend the Board's rules so as to create the classifications of "operator trainee" and "laboratory analyst trainee." 1980 Op. Att'y Gen. No. 80-78.

43-51-3. Creation of board; members; qualifications; terms; vacancies; expenses; meetings; officers.

(a) There is created the State Board of Examiners for Certification of Water and Wastewater Treatment Plant Operators and Laboratory Analysts. The board shall be composed of six members to be appointed by the Governor. The appointments shall be made as follows: one member from the technical staff of the Environmental Protection Division of the Department of Natural Resources; one member who is a currently employed public water supply system operator holding a valid certificate of the highest classification issued by the board; one member who is a currently employed wastewater treatment plant operator holding a valid certificate of the highest classification issued by the board; one member who is an employee of a municipality or county required to employ a certified operator and who holds the position of municipal or county manager, engineer, director of public works, or director of water supply and water pollution control; and one member who is a consultant in the field of water supply and water pollution control or who is engaged in teaching or administering courses in water supply and water pollution control in an educational institution in this state. The sixth member shall be appointed from the public at large and shall have no connection whatsoever with the water and wastewater treatment industry. The initial term for the member appointed from the public at large shall expire June 30, 1984; thereafter, the Governor shall appoint successors for a term of four years. The other five members of the board shall serve four-year terms, which terms shall be staggered so that the terms of two members shall expire one year and the term of one member shall expire in each of the following three years.

No member of the board may serve more than two consecutive full terms.

(b) The Governor may fill any vacancy in the appointed membership of the board and may remove any appointed member for cause.

(c) The members of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.

(d) The members of the board shall meet for an organization meeting at the call of the division director, within 60 days after their appointments and thereafter at least twice a year, at such time and place as may be provided by rules and regulations adopted and promulgated by them; provided, however, that special meetings may be called by the chairman or the division director at such time and under such circumstances as they may deem necessary and proper; and, provided, further, that any notice of such meeting shall be given all members in writing at least ten days prior to the date of the meeting.

(e) At the first meeting of the board and annually thereafter, the members shall elect one of its members to serve as chairman and one to serve as vice-chairman. (Ga. L. 1969, p. 272, § 3; Ga. L. 1975, p. 1074, § 1; Ga. L. 1980, p. 63, § 1; Ga. L. 1991, p. 954, § 2; Ga. L. 2000, p. 1706, § 19.)

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, *Waterworks and Water Companies*, § 38.

43-51-4. Division director as administrative agent of board.

The division director shall act as the administrative agent for the board and shall, with respect to the board, exercise those powers and duties conferred on him by Chapter 1 of this title. (Ga. L. 1969, p. 272, § 4; Ga. L. 2000, p. 1706, § 19.)

43-51-5. Adoption of rules and regulations by board.

The board shall have the authority to adopt such rules and regulations as may be necessary to administer this chapter and effectuate the purposes expressed in this chapter. The rules and regulations shall include, but are not limited to, provisions establishing qualifications of applicants and procedures for examination of candidates. (Ga. L. 1969, p. 272, § 10; Ga. L. 1975, p. 1074, § 3; Ga. L. 1994, p. 97, § 43.)

Administrative rules and regulations. — Rules of the profession, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of State Board of Examiners for Certification of Water and Wastewater Treatment Plant

Operators and Laboratory Analysts,
Chapter 750-1 et seq.

43-51-6. Certification of operators of water or wastewater treatment plants and laboratory analysts; renewal; continuing education; training period.

(a) The board shall certify persons as to their qualifications to operate wastewater treatment plants, wastewater collection systems, water distribution systems, or public water supply systems.

(b) Any person who operates a wastewater treatment plant, wastewater collection system, water distribution system, or public water supply system shall obtain a certificate from the board; provided, however, that each industrial wastewater treatment or pretreatment facility, wastewater collection system, or distribution system shall be required to have only one responsible operator obtain such a certificate; and provided, further, that any person who is operating a wastewater treatment plant on July 1, 1991, and who is required to obtain a certificate on or after July 1, 1991, but who was not required to have a certificate prior to said date, shall have until July 1, 1996, to obtain such certificate without being in violation of this chapter; provided, further, that no such person who is operating without a certificate a wastewater treatment plant on July 1, 1991, shall be authorized to operate any other wastewater treatment plant after July 1, 1991, without a certificate as required by the board. Such person shall make application to the board for such certificate, which application shall be accompanied by a fee in an amount established by the board.

(c)(1) Any laboratory analyst who conducts certain tests, as defined by the board, of water or wastewater samples in conjunction with the operation of public water supply systems or wastewater treatment plants shall obtain a certificate from the board; provided, however, that any industrial wastewater or pretreatment plant shall be required to have only one responsible analyst obtain such a certificate, and any other analyst in that facility shall be supervised by such person. Such persons shall make application to the board for such a certificate, which application shall be accompanied by a fee in an amount established by the board; provided, however, that until July 1, 1993, any person who has obtained or shall obtain certification by the board as an operator under this chapter shall not be required to obtain a certificate from the board to provide services as a laboratory analyst.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, any person who possesses certification by the board as Class I and II operators of a water treatment plant or wastewater treatment plant shall not be required to obtain a certificate to perform the duties

of a laboratory analyst in conducting certain tests for reporting purposes as defined by the board.

(d) Any certificate granted under this chapter shall be renewable biennially. Application for renewal of certificates shall be accompanied by a renewal fee in an amount established by the board. The board shall be authorized to require continuing education as a condition of certificate renewal. The board shall be authorized to waive the continuing education requirement in cases of hardship, disability, or illness or under such other circumstances as the board deems appropriate.

(e) The board may establish a training period during which a certificate is not required.

(f) Any person who possesses certification by the board as an operator of a public water supply system shall not be required to obtain a certificate to operate a water distribution system.

(g) Any person who possesses certification by the board as an operator of a wastewater treatment plant shall not be required to obtain a certificate to operate a wastewater collection system. (Ga. L. 1969, p. 272, § 6; Ga. L. 1975, p. 1074, § 2; Ga. L. 1980, p. 304, § 6; Ga. L. 1989, p. 304, § 1; Ga. L. 1991, p. 954, § 3; Ga. L. 1992, p. 2518, § 1; Ga. L. 1993, p. 305, § 3; Ga. L. 1994, p. 1927, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, a comma was inserted following “1996” in subsection (b).

OPINIONS OF THE ATTORNEY GENERAL

Board of Examiners may not amend the Board’s rules so as to create the classifications of “operator trainee” and “laboratory analyst trainee.” 1980 Op. Att’y Gen. No. 80-78.

RESEARCH REFERENCES

ALR. — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

43-51-6.1. Establishment of Class IV classifications; certification; renewal; course of training.

(a) In addition to current classifications I, II, and III, the division shall establish a new classification to be known as Class IV which designation shall apply to all very small public water supply systems in this state which are ground-water systems serving a population of less than 1,000.

(b) The board shall certify persons as to their qualifications to operate a very small public water supply system.

(c) Any person who operates a very small public water supply system shall obtain a certificate from the board. A requirement for such certification shall be the successful completion of a basic six-hour course of training approved by the board. No person being certified prior to July 1, 2000, shall be required to possess a high school diploma or its equivalent.

(d) A certificate granted under this Code section shall be renewable biennially. Application for renewal of certificates shall be accompanied by a renewal fee in an amount established by the board. (Code 1981, § 43-51-6.1, enacted by Ga. L. 1994, p. 1927, § 3; Ga. L. 1997, p. 835, § 1.)

43-51-7. Examinations.

Board approved examinations shall be used in determining the knowledge, ability, and judgment of applicants for certification as operators or laboratory analysts except for applications submitted prior to July 1, 2000, for Class IV level certifications. Such examinations shall be given at least six times annually. (Ga. L. 1969, p. 272, § 7; Ga. L. 1980, p. 304, § 7; Ga. L. 1994, p. 1927, § 4; Ga. L. 2000, p. 879, § 1; Ga. L. 2010, p. 266, § 47/SB 195.)

The 2010 amendment, effective May 20, 2010, substituted “Board approved examinations shall” for “The board shall prepare examinations to” at the beginning of the first sentence.

43-51-8. Reciprocity.

The board, upon application, may issue a certificate without examination to any person who holds a certificate in good standing issued by another country or by any state, territory, or possession of the United States which has requirements for certification substantially similar to those of the board. (Ga. L. 1969, p. 272, § 8; Ga. L. 1980, p. 304, § 8; Ga. L. 1991, p. 954, § 4; Ga. L. 1994, p. 1927, § 5.)

Cross references. — Cooperation between Georgia and other states generally, T. 28, C. 6.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 8, 9. **C.J.S.** — 81A C.J.S., States, § 29.

43-51-9. Revocation and suspension of certificates; hearing.

The board may investigate the actions of any operator or laboratory analyst and may revoke or suspend the certificate of an operator or

laboratory analyst, following a hearing conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," when it is found that the operator or laboratory analyst has practiced fraud or deception; that reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or that the operator or laboratory analyst is incompetent or unable to perform his duties properly. (Ga. L. 1969, p. 272, § 11; Ga. L. 1975, p. 1074, § 4; Ga. L. 1980, p. 304, § 10.)

RESEARCH REFERENCES

ALR. — Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 ALR 1388.

43-51-10. Classification of public water supply systems and wastewater treatment plants.

The division shall classify all public water supply systems and wastewater treatment plants with due regard to the size, type, character of water or wastewater to be treated, and other physical conditions affecting such systems or treatment plants, according to the skill, knowledge, and experience that the operator in responsible charge must have to operate the facilities successfully so as to protect the public health and welfare and prevent unlawful pollution. (Ga. L. 1969, p. 272, § 5; Ga. L. 1980, p. 304, § 5; Ga. L. 1994, p. 97, § 43.)

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, Waterworks and Water Companies, § 38.

43-51-11. Provision by state agencies operating and maintaining facilities of at least one licensed operator in each departmental district.

Notwithstanding any other provisions of this chapter, any state agency which operates and maintains facilities contemplated by this chapter shall be required to have a minimum of one licensed operator in each departmental district. (Ga. L. 1975, p. 1074, § 6.)

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, Waterworks and Water Companies, § 38.

43-51-12. Permit conditions.

The director is authorized where appropriate to include, as a condition in a permit issued pursuant to Part 5 of Article 3 of Chapter 5 of Title 12, the “Georgia Safe Drinking Water Act of 1977,” or Article 2 of Chapter 5 of Title 12, the “Georgia Water Quality Control Act,” a requirement that the operator and laboratory analyst be duly certified in accordance with this chapter. (Ga. L. 1980, p. 304, § 14.)

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, Water-works and Water Companies, § 38.

43-51-13. Application by director for injunctive relief authorized; judgment.

(a) Whenever, in the judgment of the director, any person has engaged in, is currently engaged in, or is about to engage in any act or practice which constitutes or will constitute an unlawful action under this chapter, he may make application to the superior court of the county in which the unlawful act or practice has been or is about to be engaged in for an order enjoining such act or practice or for an order requiring compliance with this chapter; and, upon a showing by the director that such person has engaged in or is about to engage in any such act or practice, a permanent or temporary injunction, restraining order, or other order shall be granted without the necessity of showing lack of an adequate remedy at law.

(b) The director may file in the superior court of the county wherein the person under order resided, or, if said person is a corporation, in the county wherein the corporation maintains its principal place of business or in the county wherein the violation occurred, a certified copy of a final order issued pursuant to subsection (d) of Code Section 43-51-14 and unappealed from or a final order issued pursuant to subsection (d) of Code Section 43-51-14 affirmed upon appeal; whereupon the court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though the judgment has been rendered in an action duly heard and determined by the court. (Ga. L. 1980, p. 304, §§ 14, 15; Ga. L. 1994, p. 97, § 43.)

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judgments, §§ 57, 59.

C.J.S. — 43A C.J.S., Injunctions, § 135. 49 C.J.S., Judgments, §§ 77, 78.

43-51-14. Penalty.

(a) It shall be unlawful for any person to perform the duties of an operator or laboratory analyst without being duly certified under this chapter.

(b) It shall be unlawful for any water or wastewater treatment plant to be operated in Georgia by a person or persons not certified under this chapter.

(c)(1) Any person violating this chapter shall be liable for a civil penalty not to exceed \$500.00 for each day during which such violation continues.

(2) Any person willfully violating this chapter shall be liable for a civil penalty not to exceed \$5,000.00 for each day during which such violation continues.

(d) Whenever the director has reason to believe that any person has violated any provision of this chapter, he may, upon written request, cause a hearing to be conducted before a hearing officer appointed by the Board of Natural Resources. Upon a finding that such person has violated any provision of this chapter, such hearing officer shall issue his initial decision and order imposing such civil penalties as are provided in this Code section. Such hearing and any administrative or judicial review thereof shall be conducted in accordance with subsection (c) of Code Section 12-2-2. (Ga. L. 1969, p. 272, § 13; Ga. L. 1975, p. 1074, § 5; Ga. L. 1980, p. 304, § 13.)

RESEARCH REFERENCES

ALR. — Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

43-51-15. Termination.

Repealed by Ga. L. 1992, p. 3137, § 39, effective July 1, 1992.

Editor's notes. — This Code section was based on Ga. L. 1981, Ex. Sess., p. 8; Ga. L. 1985, p. 432, § 2 and Ga. L. 1991, p. 954, § 5.

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